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NAVY GRADUATE COMPTROLLERSHIP PROGRAM

UNITED STATES MARITIME POLICY and the PRINCIPLE OF CARGO PREFERENCE

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For

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PREFACE

The American Merchant Marine is of great significance to the United States Navy in time of war. Without a sufficient number of merchant vessels of the proper types and characteristics, any plan for the logistic support of overseas forces would be doomed to failure. It is the Navy's job to shepherd cargo vessels to their destinations, but it is the job of the Merchant Marine to load, transport, and finally off-load the cargoes.

Too few naval officers are well informed of the operations of our Merchant Marine. There is some misunderstanding among officers, and civilians alike, as to what the merchant fleet, and the maritime industries consist of; why they are important to the national economy as well as to the national defense; and what problems the Merchant Marine faces today. This paper is an attempt to explain the function of the United States-flag commercial fleet and to explain some important segments of our national maritime policy.

Sooner or later, every successful naval officer will be confronted with the matter of dealing with the Merchant Marine, or some element of the maritime industry. It is important that officers have at least a general knowledge of this very broad subject.

The narrative is brief and a minimum of detail has been included to describe the most important elements of United States maritime policy. To cover the field extensively would be impossible in a paper of this length, for the marine-shipping industry is complicated and enshrouded by many layers of laws and regulations, and laws-within-laws, and regulations-within-regulations. An

industry with a history as long and as colorful as the Merchant Marine's is bound to be complicated and deeply involved with laws, customs, and traditions.

I am deeply grateful to Mr. [illegible]. E. Bull, Civilian Shipping Advisor to the Commander of the Military Sea Transportation Service and Professor of Transportation at Georgetown University, for originally directing me toward this subject. I am also grateful to Captain D. R. McMullen, USN, also of MSTS, for his wise counsel and sound advice; and to the members of the Washington staff of the American Merchant Marine Institute who provided me with much current data concerning the ocean shipping business; to Mr. E. C. Pollack, legal advisor to the Armed Service Petroleum Purchasing Agency; to Mr. John J. McMullen, Chief of the Construction and Repair Division, Maritime Administration; and Mr. Heine of the Office of Ship Statistics.

I am particularly grateful to Congressman William Maillard of California, and his staff, whose introduction to the permanent staff of the House Committee for Merchant Marine and Fisheries gave me an inside track to much valuable information.

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Commander, USN

The George Washington University
Washington, D. C.
May 8, 1956

LIST OF ILLUSTRATIONS

CHAPTER I

INTRODUCTION

America Needs a Prosperous Merchant Marine

There are more merchant vessels under the United States flag than any other. United States seaports handle more foreign trade than do those of any other country. Yet the United States is not a "maritime nation" in the strict interpretation of the phrase. The shipbuilding and marine shipping industries of this country are but a small segment of our economy. "The active merchant fleet, presently consisting of less than one-third of the total U. S. merchant marine, lifts less than one-quarter of the cargo tonnage transported in the waterborne foreign trade of the United States."[1]

Despite its dwarfish size in comparison with the giant manufacturing and agricultural industries, this small industry draws much attention both at home and abroad. It has a clamorous lobby in Washington which demands much attention from the legislative and executive branches of the government. But it is not entirely unfitting that this minority industry demand attention because America needs a robust and vigorous merchant marine. "A necessity in war, and a source of independence and strength in peace,"[2] the merchant fleet has been termed by no less an authority than President Eisenhower himself as "the fourth

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[1] Wytze Gorter, United States Merchant Marine Policies; Some International Economic Implications, (Princeton, N. J.: (Princeton University Press, 1953), p. 1; also, "Essays in International Finance," pamphlet, No. 23, June, 1955, published by Princeton Graduate School of Economics.

[2] RADM Wm. S. Benson, The Merchant Marine, (New York: Prentice-Hall Co., 1923), p. 21.

arm of our national defense."[3]

With the recognition that we need a marchant marine, we are faced with the questions: (1) how much is enough? and, (2) how much can we afford? These questions have plagued American policy-makers since the early days of the republic.

Why Have a Merchant Marine?

The inescapable fact is that the United States-flag merchant marine cannot compete on an equal basis with cheap foreign shipping. Without government subvention the United States-flag fleet would gradually disappear from the seven seas.

The question might well be asked: If foreign ships can provide the service cheaper, then why not let them? Such a question at least has the virtue of facing the issue squarely. This very question has been asked a good many times in the past. The answer is, likewise, to be found in the past.

Brushing aside for a moment the grave need for a merchant fleet in time of war, it is an economic reality that the United States merchant marine exerts a stabilizing effect upon the world shipping market. A foreign monopoly of ocean shipping has worked to the detriment of American trade and commerce twice in recent history: once during the early months of the First World War, and again during the mid-thirties, during the great British shipping strike of 1933.[4] By 1914, the American merchant fleet had deteriorated to the point where it could carry only about 9% of the country's foreign export,and exporters

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[3] President of the United States, Budget Message to the United States Congress, January, 1954.

[4] During the first few weeks of World War I, dry-cargo rates increased from $1.00 per ton-mile to $20.00 per ton mile.

relied heavily on foreign shipping. Within a few weeks after hostilities opened in Europe, shipping rates rose as much as 2,000 percent. American cargoes rotted on the wharves in want of cargo space. The same thing happened in 1933, but to a lesser extent--freight rates rose only about 1,400 percent.

The most compelling reason for a strong United States merchant fleet is the need for national defense. During the last year of World War II, the United States-flag merchant marine delivered an average of more than 8,500 long tons of cargo and military supplies to U. S. combat forces overseas every hour of every day and night--and at times it wasn't enough.[5] As President (then General) Eisenhower said in 1944, "World War II was won the day we, in the United States, reached the point where we were building merchant ships faster than the Nazis could sink them."[6] Not only are ships needed in war, but a capable shipbuilding industry as well, and a nucleus of trained and experienced merchant marine officers and crewmen. The logistic requirements for the successful prosecution of a future war may be far greater than were those of World War II.[7]

United States Maritime Policy

Present United States maritime policy is dedicated to the purposes of maintaining a merchant marine capable of carrying a substantial portion of the foreign commerce, and acting as an effective naval and military auxiliary in time of war. The present policy was first expressed by Congress in 1920, and confirmed in later laws. The most recent policy statement is to be found in

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[5] John J. Collins, "The American Merchant Marine in World War III," U. S. Naval Institute Proceedings, April, 1956, pp. 406-15.

[6] General Dwight D. Eisenhower, Crusade in Europe, (New York: Doubleday Book Co., 1946), p. 219.

[7] Collins, op. cit., p. 407.

the second paragraph of the Merchant Ship Sales Act of 1946:

> Section 2 (a):
>
> It is necessary for the national security and the development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned by trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.
>
> (b) It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.[8]

For the purposes of this study, the execution of United States maritime policy can be divided into five basic segments: (1) Construction-Differential Subsidies; (2) Operating-Differential Subsidies; (3) control of competition; (4) cabotage regulations; and, (5) cargo preference.

The subsidies, control of competition, and cabotage regulations have been generally accepted at home and abroad, but the cargo preference principle which has reopened an old argument, is the subject of great controversy in the shipping world here and abroad.

In the following chapters the background of United States maritime policy will be sketched out, and with that background in view, each segment of our present policy will be discussed. Considerable attention will be given to that lively current issue--the Cargo Preference Act of 1954.

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[8] Merchant Ship Sales Act of 1946, P. L. 321, 60 Stat 41, 79th Congress, 2d Session, March 8, 1946.

CHAPTER II

THE MARITIME INDUSTRIES

The expression "merchant marine" represents much more than just seagoing vessels. It includes the shipbuilders and the whole industrial army which maintains, repairs, and services the commercial vessels of the United States-flag merchant fleet; it includes the many different processes involved in building, maintaining, and operating the ports and harbors; labor--the seamen and the longshoremen; the merchant marine means a sprawling, complex, but vital industrial mechanism in land-locked places as well as on the sea coasts, and directly or indirectly, providing work for thousands of Americans. It includes, too, the warehousemen, ship chandlers, brokers, and freight forwarders, just to name a few of the myriad of enterprises which depend on ocean transport.

It has been estimated that some three million people earn their livings through the operation or servicing of the United States merchant fleet. Twenty-two of the forty-eight states have major seaports. Two hundred and fifty-four Representatives and forty-four Senators in the United States Congress have constituents directly or indirectly interested in the maritime industries. About ten percent of all movable American production goes to overseas markets. In September, 1952, the Maritime Administration estimated the replacement value of United States-flag privately owned merchant ships at something more than $7.3 billions; and this figure does not include the several billions invested by shipbuilding and service industries.

Though America's maritime industry may be small with respect to other

segments of industry, it is still, politically and financially, big business.

The American Merchant Fleet

At the end of World War II, there were 4,861 sea-going vessels of all types in the U. S. flag merchant fleet.[9] At the end of 1952, there were a total of 3,462 vessels, both active and inactive, in the fleet of which 1,574 were active in either foreign or domestic commerce. As of the beginning of 1953, only 1297 privately-owned vessels were engaged in ocean shipping, of which 642 were in the foreign trade and 470 in the domestic and non-contiguous trades.[10]

The analysis, by ship types, of the privately-owned merchant fleet as of the end of 1952 was:

In the Foreign Trade

Freighters	492
Tankers	116
Combination Vessels	34

In the Domestic or Non-Contiguous Trades:

Freighters	159
Tankers	308
Combination Vessels	3

The composition of the merchant fleet has not changed significantly since January, 1953. The actual number of vessels is somewhat fluid because vessels are removed from, or returned to, service as the demand for ocean-shipping changes.

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[9] These figures do not include vessels on the Great Lakes and Inland waterways, special types, or merchant-types owned by the armed forces. Nor are the 546 vessels on lend-lease to foreign allies included. Source: U. S. Department of Commerce, Maritime Administration, Division of Ship Statistics.

[10] Non-contiguous trade is carried on between the U. S. mainland and U. S. territories or possessions such as Puerto Rico, Panama Canal, Hawaii, and Alaska.

The Reserve Fleet provides a cushion to meet changing demands in the shipping market. In times of shipping stringency, the Maritime Administration may activate vessels for lease or charter to private operators. When demand drops off, vessels are returned to a reserve status. As a result of this cushion, dry and bulk cargo rates have remained fairly stable for the past few years; but in the bulk-liquid trade the story has been different. With a steady upward trend in the demand for tankers, rates have consistently moved upward. Reason? There were only twelve tankers in the inactive fleet as of December 31, 1952.

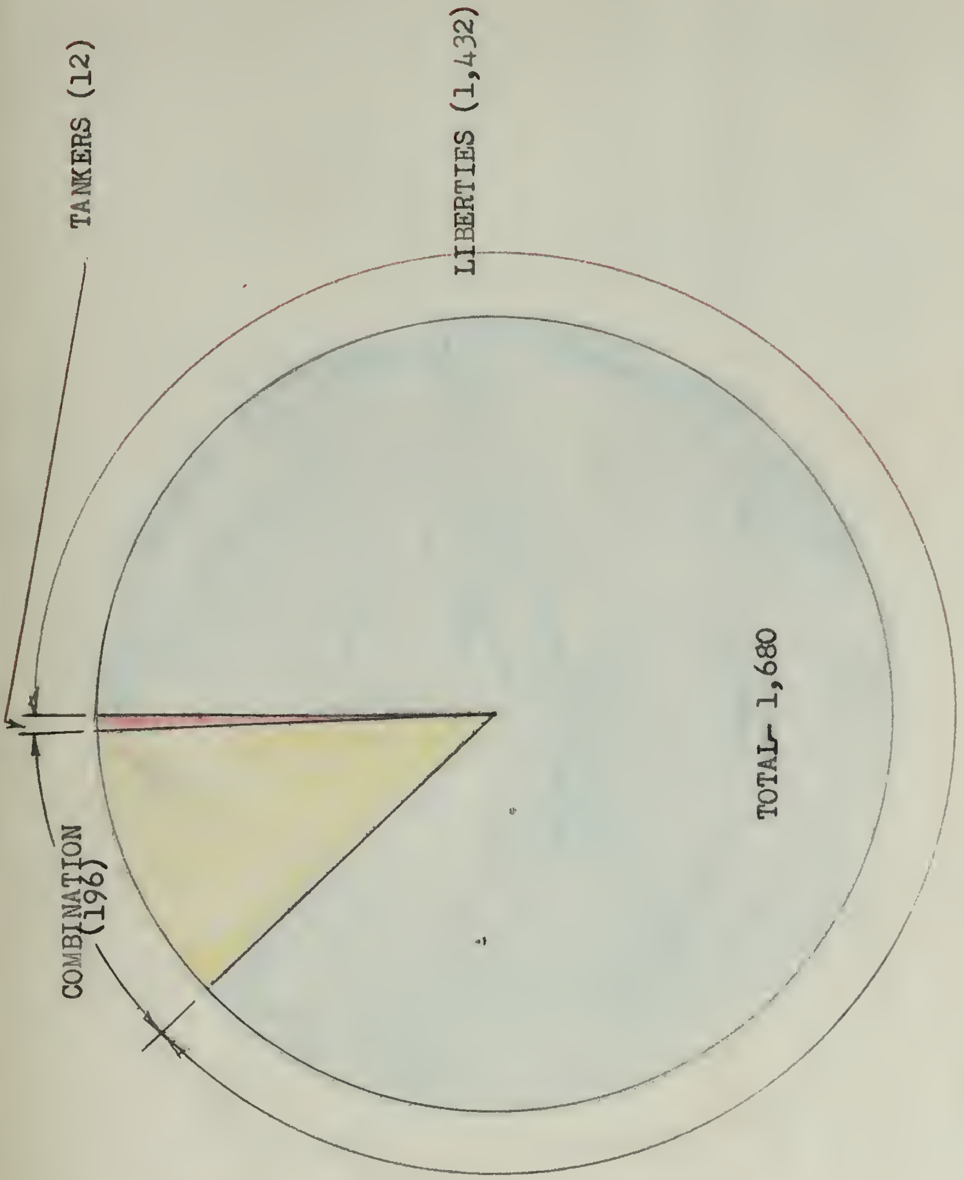
Figures 1 and 2, pages 8 and 9, show the composition of the United States government-owned merchant fleet as of December 31, 1952.

The Merchant Fleet Operators

Shipowners and ship operators fall into two general classes--berth line operators and tramp operators. The two classes are distinguished by the nature of their operations.

Berth Liners conduct scheduled sailing over regularly established trade routes between the major seaports of the world. Individual lines are often confined to certain routes and geographic areas by mutual agreement with other shipping lines. Ordinarily, liners cannot deviate from their regular paths without prior approval of their conference members, except, of course, in emergencies. Liner operations are roughly comparable to sea-going railroads operating over regular routes on regular schedules. Off- route shipping must be carried in Tramp vessels.

Tramp vessels of many types range over all the seven seas seeking profitable cargoes wherever they can be found. Tramps do not operate on schedule or over regular routes. Tramp operations are similar to those of independent



U.S.-Flag Sea-Going Merchant Ships in the Reserve Fleet, December 31, 1952

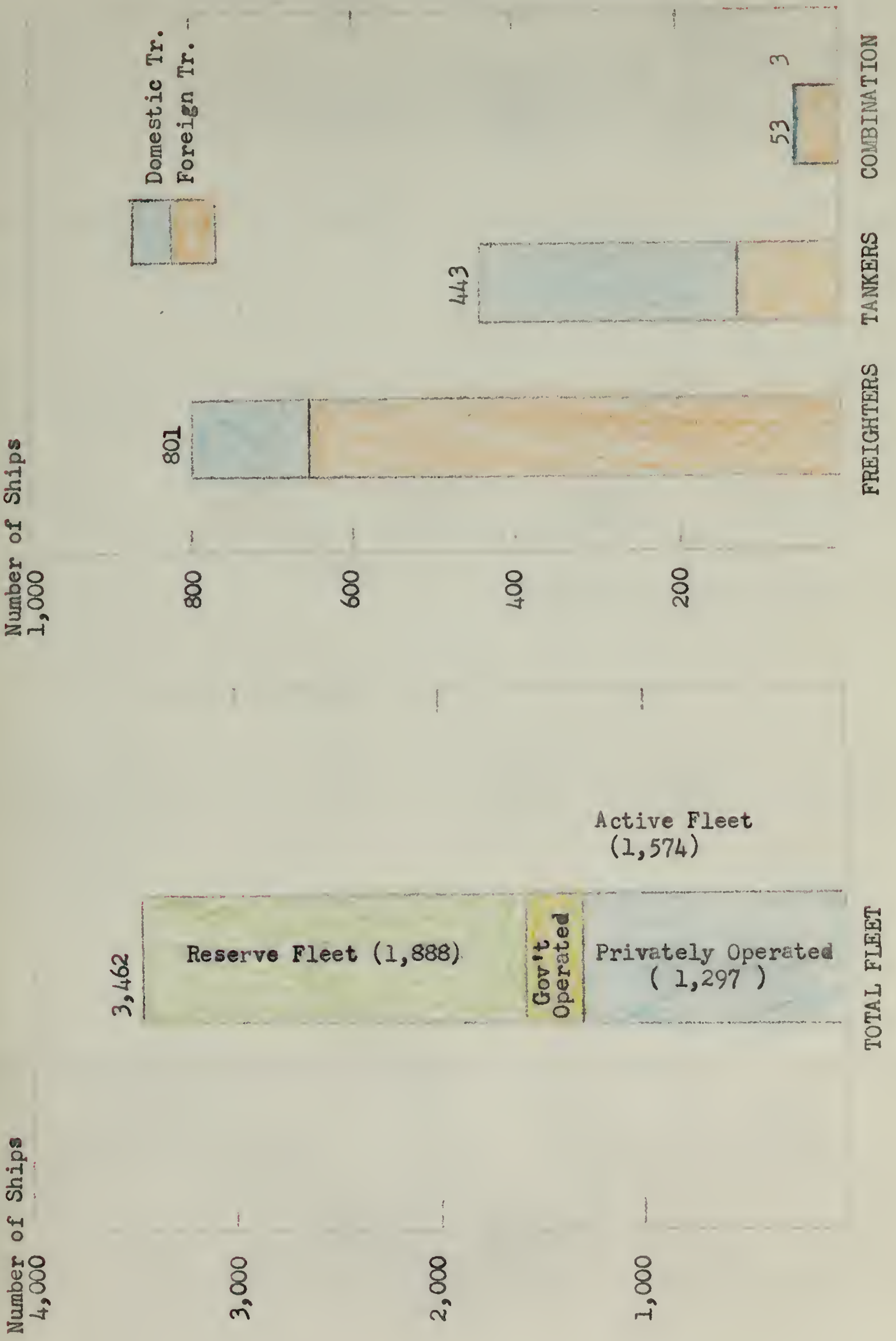
(All vessels owned by the Maritime Administration)

Source:
U.S. Dept. of Commerce,
Maritime Administration,
Division of Ship Statistics.

Figure 1

TOTAL U.S.-FLAG MERCHANT FLEET
BOTH ACTIVE AND INACTIVE
DECEMBER 31, 1952

(PRIVATELY OPERATED FLEET SHOWN BY TRADE)



Source: U.S. Dept. of Commerce, Maritime Administration, Div. of Ship Statistics.

-Figure 2-

Number of ships
Number of ships

motor-trucks ashore who haul any load their trucks can profitably handle.

The berth liners of which the United States Lines, Grace, or Lyke Brothers are typical examples, move a large percentage of the world's packaged or crated goods in the international trade. They also carry most of the surface-transported passengers and most of the mail. Like railroads, they accept cargo in either small or large amounts and the majority of their cargoes are less-shipload lots.

Tramp ships on the other hand, move most of the world's bulk cargo such as grain, coal, or minerals, and most important, most of the petroleum. About ninety percent of the world's crude oil and petroleum products move in tramp tankers. As a rule, tramps accept cargo only on a full-cargo basis because they can seldom operate profitably on mixed cargoes. There is another important difference between the operations of the liners and the tramps, and that is the matter of shipping rates.

Almost without exception, berth line operators are members of international shipping conferences, or shipping rings. By mutual agreement among the members, liner freight rates are set within close limits. Thus, competition is limited in the liner trade. (The subject of Shipping Conferences is covered in more detail in Chapter V).

In the tramp trade, the situation is quite the reverse. Tramp rates are strictly market prices and vary from day to day according to routes, types of cargo, and seasonal patterns. For the most part, the tramp rate is what the trade will bear, and they respond very quickly to changes in the demand for cargo space. Rates are usually quoted on the basis of ton-miles, or on a per-diem,or voyage, basis. The Military Sea Transportation Service makes extensive use of tramp shipping in the movement of Department of Defense cargoes.

MSTS may charter vessels at a certain rate per day or for a given period of time or for a particular voyage. But tramp charter rates are highly sensitive to market conditions--when shipping is tight the rates rise, and when demand slackens the rates drop.

American tramps must consider operating costs more carefully than do foreign-flag vessels. The daily cost of operating a U. S.-flag vessel is nearly twice that of a foreign-flag vessel of similar type. In a slack market, American vessels tend to be the "price leaders" in the tramp trade. Foreign vessels will customarily set their rates just below the U. S.-flag tramp rate. When American tramps are just breaking even, the foreigners are "making a killing." The tramp trade is strictly a "dog-eat-dog" business.

Tramps procure cargo through shipping agents who work on a commission basis or through shipping exchanges. In contrast to the berth lines,among whem competition is limited, the tramp lines operate in open competition. U. S.-flag tramps usually come out second best.

The Importance of the Tramps

During 1955, 63.3% of all United States ocean-borne dry cargo exports were carried by tramp vessels of either U. S. or foreign registry. The remaining 36.7% moved in liners. In gross tonnage (carrying capacity), the size of the world's tramp fleet is nearly double the size of the liner fleet. In actual number of vessels, the tramp fleet is more than twice the size of the liner fleet, since the carrying capacity per ship is usually somewhat less. Of the total 44.5 million long-tons of dry cargo exported from the U. S. in 1955, U. S. flag liners carried 14.4% and U. S. tramps only 5.8% By contrast, foreign flag tramps carried 57.8%, or nearly ten times the amount carried in

American bottoms.[11]

In Figure 3 the importance of the tramp trade in the ocean shipping can be seen. It is evident that U. S. flag tramps are not carrying tonnage in proportion to the size of the fleet.

The merchant fleets of the world consist of about one-third liners and two-thirds tramps. At the present time, the tramp vessels in the U. S. flag fleet number less than one-half the number of liners and the tramps are steadily diminishing in number. Based on the liner-tramp ratio in other merchant fleets, the U. S. flag fleet has about one-sixth the number required to maintain a balanced fleet.

Cross Trade

An important segment of the ocean-shipping business, particularly to the tramps, is cross trade. As distinguished from direct trade which is carried on directly between two nations in a vessel registered in one country or the other, cross trade consists of cargo carried between two nations by a vessel flying the flag of a third nation. It is the ability of foreign-flag tramp ships, vis-a-vis American-flag tramps, to carry on a favorable cross trade which makes the foreign tramp operations profitable. To illustrate the international significance of cross trade, the following figures are appropriate:

During the years 1953 and 1954, Norwegian-flag vessels carried over thirteen times as much cargo between the United States and other countries as they carried between the United States and their homeland. In fact, the major participation of Norwegian vessels in United States commerce occurred between

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[11] U. S. House of Representatives, Operation and Administration of the Cargo Preference Act, Hearings before the Committee on Merchant Marine and Fisheries, January 31 - February 16, 1956. (Washington, D. C.: Government Printing Office, 1956), p. 514.

the United States and other foreign countries, not in trade with Norway herself. In 1954, British tramps obtained six times as much cargo between the U. S. and other countries as between the U. S. and the United Kingdom. Danish vessels obtained 94.3% of their cargoes in cross trade. A study of the merchant fleet operations of nine maritime nations[12] reveals that nearly four times as much cargo was carried in the cross trades as was moved in direct trades with their homelands. Most of this cross trade was carried in tramps.

Due to their high operating costs, U. S. flag tramps cannot compete favorably in the cross trade. The inability to participate in cross trade to a profitable degree is one of the most serious weaknesses of the U.S. flag tramp fleet. There is no government subsidy to assist them and preference cargoes are usually one-way hauls. Since there is no profit in hauling salt water, any successful tramp operation must be assured of a full hold in both directions. A tramp cannot afford to travel in ballast.

Ship Types

There are many different types of vessels in the marine shipping industry. Generally speaking, they fall into three broad classes--freighters, tankers, and combination vessels.

Freighters can be subdivided into dry-cargo and bulk-dry cargo carriers. Tankers are classed according to the type of liquid cargo they are fitted to carry; some carry crude oil, others are rigged to carry molasses or highly-volatile fluids. Combination vessels may be primarily passenger ships equipped to carry dry or bulk cargo.

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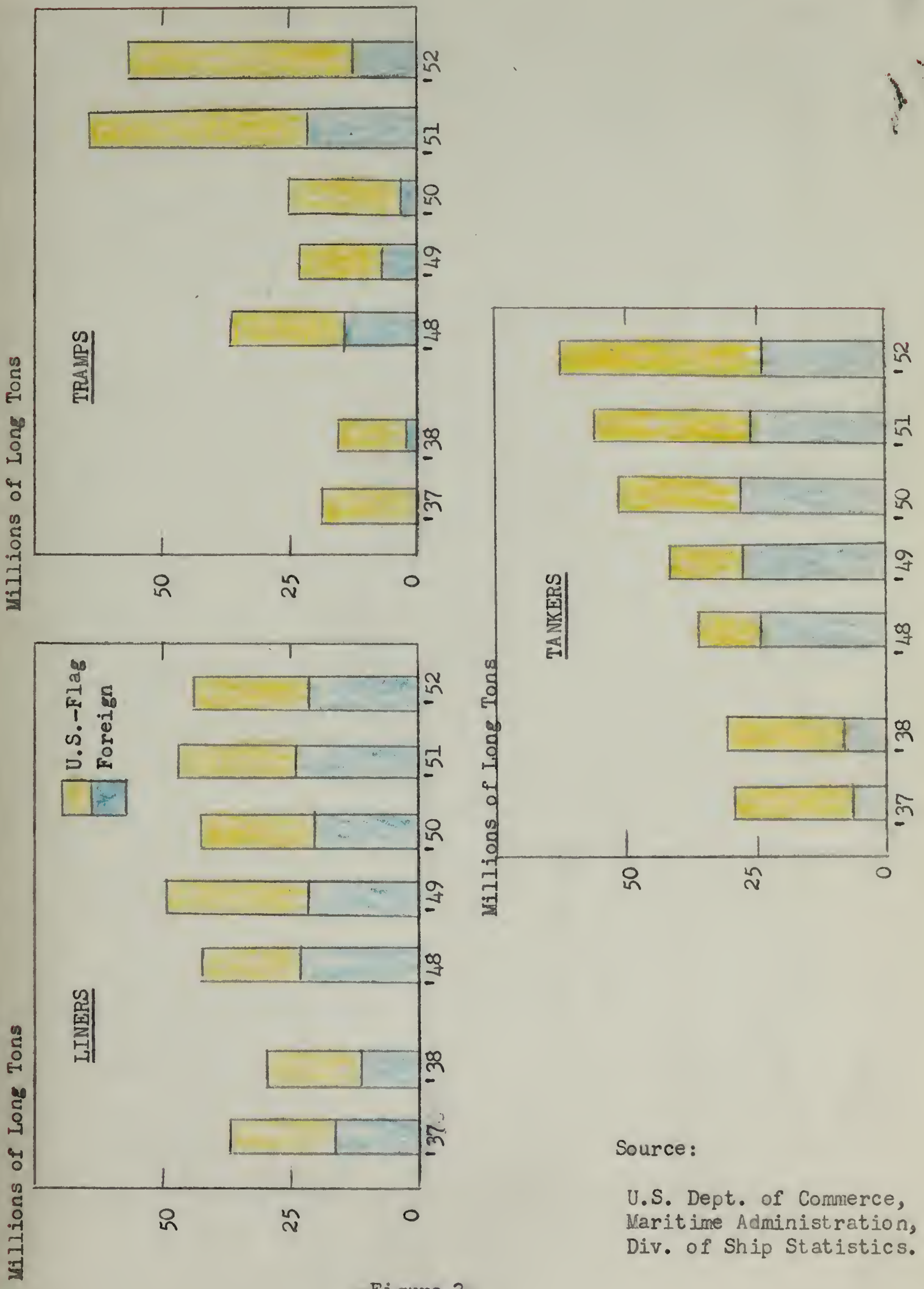
[12] U. S. Department of Commerce, A Review of Direct and Indirect Types of Maritime Subsidies With Special Reference to Cargo Preference.

U.S.-FLAG & FOREIGN -FLAG VESSELS
IN THE UNITED STATES FOREIGN TRADE, BY TYPES,
1937-38 and 1948- 1952



Source:

U.S. Dept. of Commerce,
Maritime Administration,
Div. of Ship Statistics.

-Figure 3-

Ships vary greatly in their carrying-capacity (gross tonnage), speed, and cargo-handling capabilities. Often the type cargo they carry is limited by their loading and unloading rigs. The faster ships are employed in the liner trade where speed is at a premium; the slower vessels are in the tramp trade where speed is of secondary consideration.

The freighters are the most numerous seen in the commercial fleets, with tankers second. Combination vessels are a small minority.

Block Obsolescence

"Eighty-one percent of the 1,297 ships comprising the commercially operated United States domestic and foreign fleet will be twenty years old during the period 1961-1965."[13] By 1960, a large percentage of these vessels will no longer be competitive in world trade.

Figure 4 shows the age groupings of vessels in the privately-owned active fleet. Note the predominance of war-built ships.

It is clear that if replacements are not built until the ships become obsolete, then the work-load in the shipyards will be beyond their capacity. What is needed is a progressive plan of ship replacement which will provide a number of new vessels each year over a number of years.

American ship operators are relying on war-built ships. Most of these were acquired from the government under the Merchant Ship Sales Act of 1946 at prices ranging from $50 to $120 per deadweight ton. The cost of new construction would run from $150 per dwt ton for a new tanker, to $300 per dwt ton for a new freighter. The war-built vessels were cheap investments; the depreciation expenses are low, and they were purchased under low-interest, long-term

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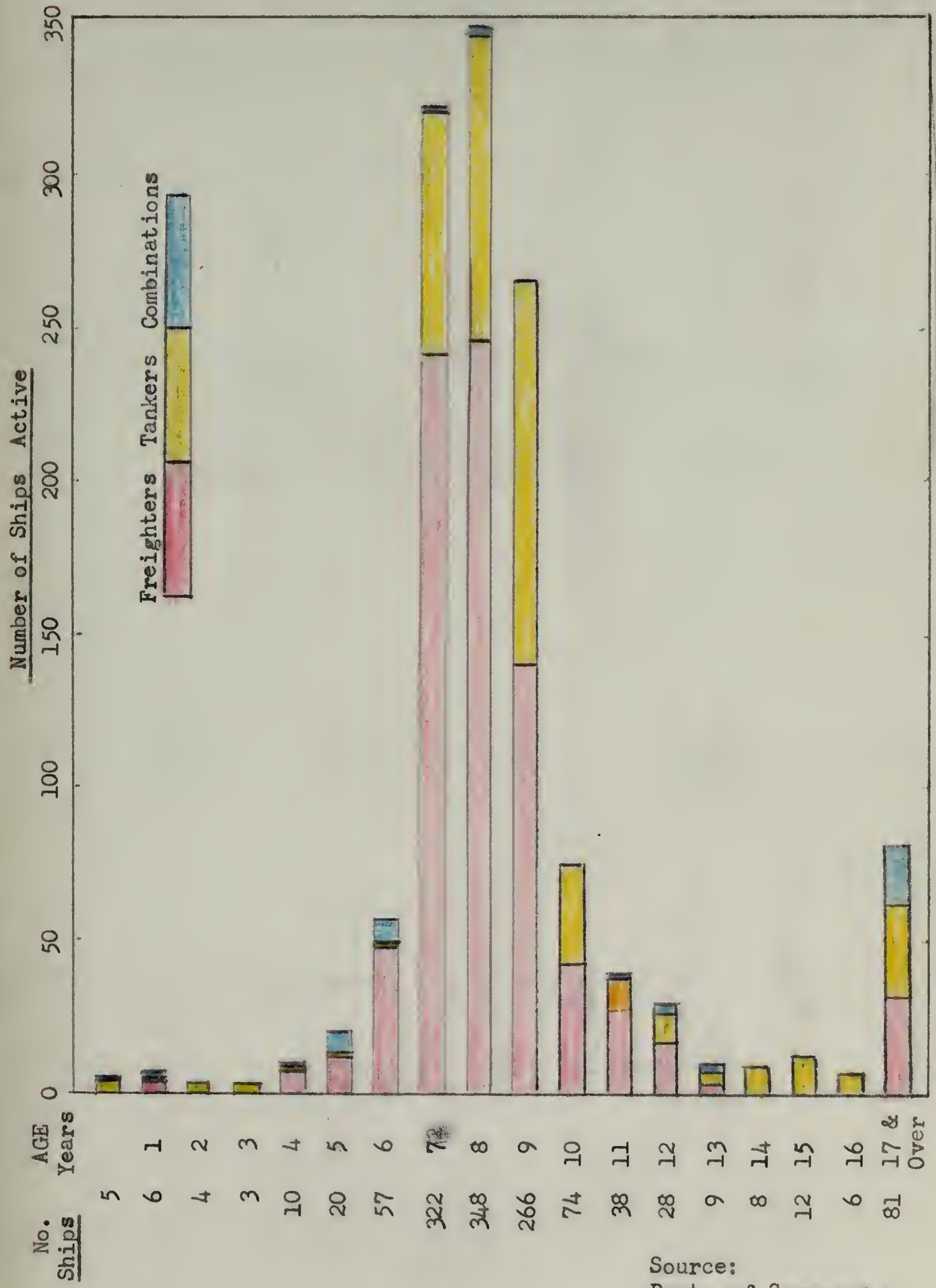
[13] U. S. Department of Commerce, Maritime Subsidy Policy, Maritime Administration.

THE AGE OF THE PRIVATELY-OWNED ACTIVE FLEET

By Ship Types
December 31, 1952



Source:
Dept. of Commerce,
Maritime Administration,
Div. of Ship Statistics.

-Figure 4-

mortgages. With these vessels many of the operators are showing profits they could not show on larger investments. However, most of the war-built fleet is capable of no more than ten knots average speed at sea. Already, ten knots is too slow for a competitive ship.

During the last thirty years, the average speed of tramp ships has increased from ten to fourteen knots. In addition, more efficient power plants and lower fuel consumption have decreased steaming costs. It is evident that U. S. operators will need better, faster vessels in the world trade before much longer.

The Maritime Administration has developed the 60-ships-a-year program to promote the gradual replacement of obsolescent merchant vessels. The aims of this program are shown on Figure 5.

The replacement of aging ships is also important from the standpoint of national defense requirements. The speed factor is of great importance in naval operations. On June 19, 1953, Rear Admiral R. E. Wilson, USN, Deputy Commander of the Military Sea Transportation Service, stated before a Congressional Committee[14] that the minimum speeds desired for military service should be 18 knots for dry-cargo ships, 20 knots for tankers, and 22 knots for troop ships. Admiral Wilson further stated that fuel consumption economies and modern cargo handling facilities are of primary importance.

A long-range program of fifty ships per year for ten years was undertaken in 1938 which permitted the development of shipbuilding facilities and the employment of shipyard labor to the point where they could be expanded quickly to meet World War II requirements. The country is faced with practi-

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[14] U. S. Senate, Merchant Marine Studies, Hearings before the subcommittee on Maritime Subsidies, Committee on Interstate and Domestic Commerce, 83d Cong., 1st Session, Part I, May-July, 1953, p. 68.

cally the same problem of block obsolescence today as existed in 1938. A shipbuilding program of sixty ships a year is of sufficient magnitude to solve these problems and also meet our shipyard nucleus requirements. It has been estimated that the cost of such a program would approach $400 million a year; if the government paid half the cost, or $200 million, it would amount to less than 1% of the annual Defense budget.

MERCHANT FLEET REPLACEMENT PROGRAM BASED ON SIXTY SHIPS PER YEAR

(20-Year Life)

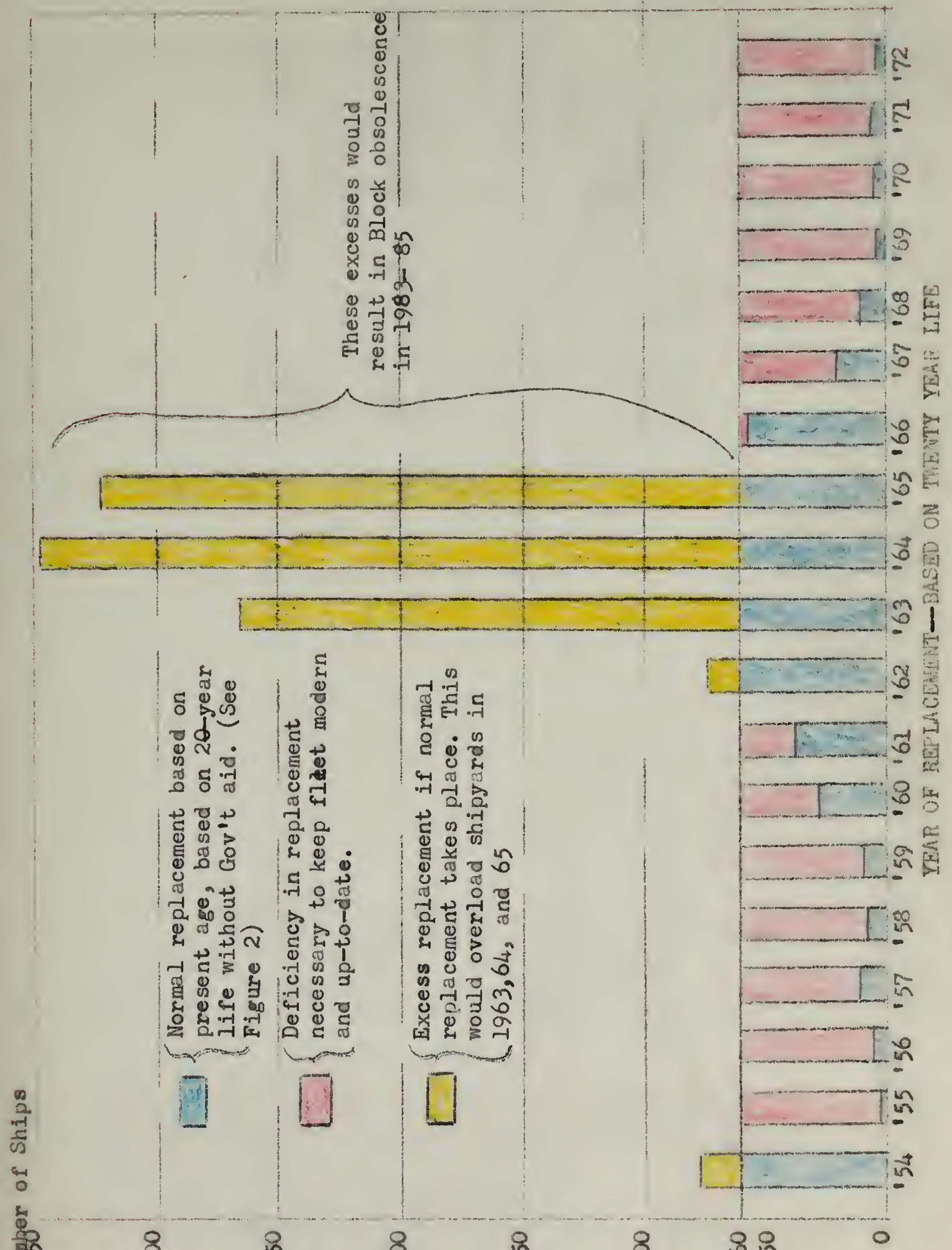

Figure -5-

Source:
U.S.Dept. of Commerce,
Maritime Administration,
Div. of Ship Statistics.

CHAPTER III

THE HISTORY OF UNITED STATES MARITIME POLICY, 1783 TO 1916

In the beginning, America was a maritime nation. The early American economy was built on a foundation of international trade. In the "golden age"[15] of American shipping (1789-1830), U. S. flag vessels moved nearly ninety percent of the foreign commerce of the country. After the Civil War, Americans turned their attention away from the sea and looked toward the settling of the great plains and the opening of the West. At about that time, the United States ceased being a strictly maritime nation.

The Colonial Period

The coastwise trade opened early in colonial history. In 1627, only seven years after the first colony was established in Massachusetts Bay, the Dutch who had meanwhile settled in New Amsterdam, "invited friendly commercial relations"[16] with the New Englanders. By 1635, a thriving trade was in progress in tobacco and salt.

During the colonial period American vessels flew the British flag and were protected in their commercial pursuits by the Royal Navy. British navi-

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[15] John G. Glover and William B. Cornell, The Development of American Industries, (New York: Prentice-Hall Co., 1951), p. 721. This work presents an excellent history of the development of the American merchant marine and its economic significance to the United States.

[16] *Ibid.*, p. 723.

gation laws which protected British-flag shipping to the detriment of foreigners likewise protected American ships and hindered the shipping of Britain's arch rivals, France and Spain. Though the navigation laws nurtured the growth of both British and American commerce, they were the direct cause of the vicious naval wars of the late eighteenth century.

The First United States Congress

When the Colonists gained their independence in 1783, American merchant vessels immediately lost their British nationality and became prey to the English navigation laws. When the First Congress convened, the American-flag merchant fleet had shrunk to a mere handful of vessels--about the equivalent of a dozen moderately sized freighters of today.

In its very first Act, the Congress paseed a tariff Act which imposed discriminatory customs duties on commodities imported in foreign-flag vessels. The same law granted a ten percent discount on duties if the goods were imported in American-owned vessels.[17] In another law, the Congress imposed high "light tonnage" taxes[18] on foreign vessels seeking to enter U. S. seaports. Certainly, nobody could accuse the First Congress of a lack of appreciation for the merchant mariners' problems. All told, five of the first eleven Acts contained provisions to regulate or encourage the growth of ocean-shipping.

Between the years 1789 and 1830, no less than fifty Acts affecting shipping were written into the laws of the land.

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[17] Ibid.

[18] "Light Tonnage" is the displacement tonnage of the bare ship, normally determined for tax purposes. It excludes all cargo, fuel, personnel, stores, equipment, and water.

The Repeal of the Navigation Acts

At the end of the War of 1812, Great Britain entered into a treaty with the United States which initiated the removal of discriminatory navigation laws by both countries. In the treaty both nations agreed "not to impose discriminatory duties on products carried in trade between the two countries."[19] This treaty led to similar treaties between the United States and other maritime nations, and by 1828, the last of the U. S. and British navigation laws had been rescinded. Other nations followed suit.

The Civil War and After

American ocean-shipping thrived up until the Civil War, but the internal strife shifted the emphasis on trade to the production of munitions. Prior to the War Between the States, U. S. imports had consisted mainly of manufactured goods in exchange for exports of cotton, tobacco, iron ore, and agricultural products. The post-Civil War years saw a great change in the composition of our exports and imports.

The urgent need for munitions had hastened the industrialization of the New England and Middle Atlantic states. At the war's end, expended industrial capacity replaced much of the need for manufactured goods of foreign origin. International trade in consumer commodities decreased, and our largest import became human beings--immigrants seeking homes in the Golden West. Investors became more interested in financing the building of railroads than in building unprofitable merchant ships. A whole new shipping industry came into existence on the Great Lakes; the iron ranges of northern Minnesota were being opened; the continent had been spanned by a railroad. The United States was well along

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[19] *Ibid*., p. 724.

the road to economic self-sufficiency.

The American merchant marine declined steadily during those years. In the "60's" and again in the "70's" the maritime industries sought relief in the Halls of Congress, but nothing important resulted. In 1891 the Congress authorized the Postmaster General to enter into contracts with American ship owners for the carriage of the mail, which brought temporary relief to a moribund industry. In the lushness of Victorian epicureanism, and lulled by the security of Pax Britannica, thoughts of war were far from mind.

When war with Spain came in 1898, the U. S. merchant marine had reached its lowest point in a century of seafaring. When military operations were opened in Cuba, "we had virtually no merchant marine; in the support of the Cuban operation, only one American-flag vessel was used, and that was a passenger vessel converted to duty as a hospital ship."[20] Things had indeed reached a sorry state! From the necessity of relying on foreign merchant vessels, the logistic effort was snarled in international red-tape. Too few vessels were under the operational guidance of the government to support our meager overseas offensive.

In 1903, President Theodore Roosevelt made a strong plea to Congress stressing the need for merchant marine development. But his appeal fell on deaf ears. That same year, the Great White Fleet circled the globe--with foreign colliers supplying the coal.

Shortly after the turn of the century, interest slowly revived in foreign trade and with it a gradual expansion of the merchant shipping industry. In 1904, an amendment to the Army appropriation act required that "vessels of the

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[20] U. S. House of Representatives, Waterborne Cargo in United States Flag Vessels, hearings before the Committee for Merchant Marine and Fisheries, June, 1954, (Washington: Government Printing Office, 1954), p. 6. See testimony of VADM F. C. Denebrink.

United States, or belonging to the United States, and no others"[21] would be permitted to transport coal, fodder, or supplies for the use of the Army and Navy. That law is still in effect today, as will be seen later. But the growth of the merchant fleet was slow. With war clouds dark over Europe, the spirit of isolationism ran high here at home. When war finally came to Europe in 1914, the American merchant marine was woefully inadequate for the tasks which confronted it.

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[21] 33 Stat. 518, Ch. 1766, April 28, 1904.

CHAPTER IV

THE MERCHANT MARINE SUBSIDIES

Direct government assistance to the maritime industry began with the Shipping Act of 1916. Shocked into action by the prospects of involvement in the war in Europe, Congress took stock of the American merchant marine and found the picture a dismal one. Not only had the U. S. flag fleet shriveled to the point where it was carrying only a paltry nine percent of our foreign commerce, but the shipbuilding industry had also sunk to an all-time low. American tramps were almost non-existent. More than nine-tenths of all merchant tonnage was fitted for coastal or intercoastal service only, and was completely unsuitable for employment on the high seas.

The purposes of the Shipping Act of 1916 were to "encourage, develop, and create a naval auxiliary, naval reserve, and a merchant marine in order to meet the requirements of the commerce of the United States, and to regulate shipping."[22] The United States Shipping Board was also created by this Act.

The huge shipbuilding program undertaken under the Act cost more than $3 billion and produced more than 2,300 ships, none of which was delivered until after the Armistice. Since all these ships were under government ownership, a new law, the Merchant Marine Act of 1920, was required to enable the Shipping Board to sell the vessels and transfer ownership to private hands. Some 1300 vessels passed into private hands under the provisions of the 1920

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[22] 39 Stat. 728, Chapter 451, September 7, 1916.

statute.

The 1920 law provided for the establishment of a construction loan fund, by setting aside Shipping Board Revenues not to exceed $25 million annually during the five years after the effective date of the Act. Under this provision, the Board could finance up to two-thirds of the construction cost of a new ship. The idea was unsuccessful because, even in those days only a small number of ships could be built for $25 million.

The Merchant Marine Act of 1928 greatly liberalized the construction loan provisions of the earlier Act. The loan fund was increased bo $250 millions, and the period of repayment extended to twenty years. Fifty-eight vessels were constructed under the 1928 statute.

The 1928 Act also set up a system of ocean-mail contracts to aid the American-flag lines engaged in foreign trade. The compensation provided for carrying the mail was fixed on a mileage basis with maximum rates varying according to size and speed of the ship. It was expected that the rates would be high enough to permit the maintenance of American-flag services in the face of foreign competition. The assistance provided to U. S.-flag operators was substantial. The total cost to the U. S. Treasury during the years 1928-37 was in excess of $175 million.

The Merchant Marine Act of 1936 provided the current basis for Construction and Operating differential subsidies based on a parity concept. The Act had very broad aims:

> Section 101. It is necessary for the national defense and the development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war

> or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, and (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States, and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.[23]

It is worthy of note that Section 1 provided the first precise declaration of the national maritime policy.

The 1936 Act established the Maritime Commission, replacing the Shipping Board, and charged it with the responsibility of executing the national policy. Supplemented by the necessary appropriations, the Act was designed to insure the construction and maintenance of an American merchant marine adequate for the foreign trade and for defense.

The Construction-Differential Subsidy

The Federal Maritime Board is authorized to grant aid to citizens of the United States in the construction, in U. S. shipyards, of new vessels to be used in the foreign commerce of the United States. Prior to the 1952 amendments to the Merchant Marine Act of 1936, such aid was limited to vessels to be used on essential service, route, or line. The amendments removed that requirement. Under present law, tramp operators are eligible on the same basis as liner operators.

In considering an application, the Board must determine that:

(1) The plans and specifications call for a new vessel suitable for commerce and for national defense.

(2) That the applicant is financially able to build and operate the vessel.

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[23] 49 Stat 1985, Ch. 858, Approved June 29, 1936.

(3) That the new vessel will replace an obsolete one.

The construction differential subsidy is designed to do two things: (a) replace old vessels with new, modern ships, and (b) to maintain a nucleus United States shipbuilding industry.

The Parity Concept

Under the construction subsidy plan, the United States government will pay the differential between the cost of building a ship in a U. S. shipyard and the cost of building an equivalent vessel in a foreign yard, not to exceed fifty percent of the cost. In addition, the government will pay for national defense features designed and built into the ship. The completed vessel becomes the private property of the private individual.

The Construction and Repair Division of the Maritime Administration maintains up-to-date information on foreign shipbuilding costs. Since foreign ship operators are not anxious to reveal their costs, because there is no possibility of their getting a contract, much of the task of obtaining this cost information is done on a personal basis between representatives of the Administration and the operators of foreign yards. In addition, certain foreign nationwide economic indices are maintained, such as labor costs, the cost of living, etc., which provide a statistical basis for cost determination. Since the procedure for building a ship is the same anywhere, it is possible to build up estimated costs with a few known facts. The foreign cost estimates determined by the Board establish the Construction Differential parity.

The plans and specifications for proposed ships must receive Navy Department approval. Defense features which the Navy insists upon are usually increased propulsive power; additional fresh-water evaporating capacity; shock-mounting of electrical fixtures; and additional electric-generating capacity.

Although in the past, the authority to pay for defense features with government funds has been used to make up differences between parity and the 50% maximum subsidy, this is not common practice. The cost of defense features is usually insignificant, rarely amounting to more than $400,000 per vessel.[24]

There are several financing schemes possible under the Act of 1936. One plan permits the purchaser to make a down-payment of twenty-five percent of the estimated foreign cost in cash, with the rest amortized over twenty annual payments at an interest rate of 3.5%. Under another plan, the government actually finances the vessel, and sells it to the purchaser after its completion and acceptance. Under a third plan, the government guarantees a first mortgage on the ship up to ninety percent of the vessel's sales value, normally eighty-seven and one-half percent of its U. S. cost excluding defense features. Under this last plan, the purchaser is able to obtain a seventy-five percent mortgage through commercial lending institutions. Recently, under pressure from many quarters, the Maritime Administration has favored the last mentioned plan in order to place the loans in private hands. That policy has worked to the detriment of the program, however, because it means higher interest costs to the buyer.

Costs in U. S. shipyards are consistently higher than in foreign yards. A recent survey showed that while a British shipyard utilized about one-fifth more man hours of labor in the construction of a ship than did American yards, the basic hourly rate in the American yards is about three and a half times the British labor rate. Construction costs are about forty to forty-six percent lower in Japanese and European yards.

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[24] Personal interview with Mr. J. J. McMullen, Chief of the Construction and Repair Division, U. S. Maritime Administration.

The Results of the Program

From the enactment of the program in 1936 down to December 31, 1952, a total of 247 ships were built under the program. Of oourse, the whole plan was set aside during the war. During the same period, forty-seven dry cargo vessels were built in American yards without the subsidy. It is apparent that the program has secured increased business for U. S. shipyards.

The total cost to the government for construction-differentials amounted to $426,185,833 for the 247 ships built. Since 1952, three large passenger liners were constructed, the SS Constitution, SS Independence, and the SS United States, on which the estimated subsidy payments will total about $230 millions, but the final figure has not yet been determined.

Current Trends

At the present time, there is an acute shortage of tankers. There are now a total of 40 tankers under construction in the six private shipyards on the East Coast, three on the Gulf Coast, and six on the West Coast. There are also signs that new, more efficient, and more competitive dry-cargo ships will be needed in the near future. A recent change in attitude by the Maritime Administration has contributed much to the present success of the program. In the past too much emphasis was placed on the military features in the design of merchant ships. Under the present administration, the emphasis is on commercial utility with defense features purely secondary. This, it appears, is as it should be. The new designs are proving much more popular among American ship operators. After all, unless it's a ship they can make money with, they're not interested at any price.

The Operating-Differential Subsidy

Indirect operating subsidies are nearly as old as the shipping industry itself. Early in American history, the tariff acts provided import duty discounts to American-flag merchant vessels. In 1891, by act of Congress, the Postmaster General was authorized to enter into mail contracts with U. S. ship-operators. The mail contracts provided the only government assistance to the merchant marine up until the Merchant Marine Act of 1936.

Title VI of the Act of 1936 established the Operating-Differential subsidy program for the direct assistance of U. S.-flag merchant vessels in direct competition with low-cost foreign shipping. The act is very definitive as to which vessels, and in what service, are to be entitled to the payments:

> The Commission is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States. No such application shall be approved unless (a) the operation of such vessel or vessels in such service, route, or line is required to meet foreign-flag competition, and to promote the foreign commerce of the United States, and that such vessel or vessels were built in the United States <u>or</u> documented under the laws of the United States (...).[25]

It should be noted that the law permits payment of the subsidy only to vessels in certain essential services. Exactly which services would be eligible was left to the determination of the Maritime Commission. Also, it should be noted that the subsidy is payable by voyages, not by vessels or by shipping lines.

The computation of the government's liability is based upon a parity scheme. The items of the ship operating costs which are subject to equalization are: (1) insurance, (2) ship maintenance, (3) repairs not compensated

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[25] 49 Stat. 1985, Sect. 601.

by insurance, (4) the wages and subsistence of ships' officers and crews, and (5) any other expense in which the Board finds the American operator to be at substantial disadvantage with his foreign-flag competitors.

The plan is no clear path to the national treasury. The operator who receives the benefits must agree to: (1) the recapture of excess profits over ten percent of invested capital, (2) the establishment of reserve funds to insure (a) the replacement of ships by the operator, (b) the prompt payment of the contractor's obligations to the United States, and (c) the continued maintenance and successful operation of the subsidized ship or ships; (3) the use, whenever practicable, of only articles, materials, and supplies produced in the United States, and (4) the repair of subsidized ships within the continental limits of the United States, except for emergency voyage repairs. Furthermore, the operating-differential contracts stipulate the minimum and maximum number of voyages to be made by subsidized operators in each designated service.

The tramp operators are not eligible for the operating-differential subsidy by reason of the fact that they seldom, if ever, adhere to schedule, or travel regular routes.

At the present time, only seventeen American shipping companies have vessels under operating-differential subsidy contracts.

The Operation of the Subsidy Plan

The operating-differential subsidy plan is almost impossible to administer equitably. It is the responsibility of the Maritime Administration to carry out the provisions of the law. In the first place, in order to establish a parity level, it is necessary to accumulate an enormous amount of statistical data on both U. S. and foreign labor costs, insurance rates, repair costs, and myriad other cost data. This, in itself, is a tremendous task. From all this

information, it is necessary to compute parity rates for each trade route. A total of 994 different rates are currently required to administer the subsidy program.[26]

And the computation of rates is not the only complication. Before a payment may be paid for a particular voyage, an audit of the company accounts is necessary in order to determine the correct differential between parity and actual costs. If there is disagreement, then there must be hearings and adjudications. All in all, the plan is quite unmanageable.

The problem of budgeting for estimated subsidy payments is a difficult one. In order to reach any kind of a realistic budget figure, it is necessary to limit the number of subsidizable voyages. This shows a major weakness in the plan. By limiting voyages, the subsidy is retarding the very thing it seeks to advance--participation of American-flag ships in foreign trade.

The out-of-pocket cost to the taxpayers since 1937, not including the war years when the subsidy was suspended, amounts to about $180 million.[27] However, no attempt has been made to compute the total costs accruing from the administration of the program. It would be a safe guess that it has cost nearly as much to administer as the total subsidy payments made so far.

The Results of the Subsidy

There are practically no tankers under the operating-differential subsidy because almost all the tanker traffic is coastwise, or non-contiguous, or is in the tramp trade. Subsidized vessels are almost exclusively freighters or combination vessels. Figures 6 and 7 show the number of subsidized and non-subsi-

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[26] U. S. Department of Commerce, Maritime Subsidy Policy, op. cit., p. 97.

[27] U. S. Department of Commerce, American Merchant Marine and the Federal Tax Policy, the Maritime Administration, November 1, 1952.

information, it is necessary to compare [illegible]

[illegible]

program.[1]

[illegible]

The process of [illegible]

[illegible]

The [illegible]

[illegible]

The Results of the Survey

[illegible]

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[1] U. S. Department of Commerce, [illegible]

[2] U. S. Department of Commerce, [illegible]

dized vessels engaged in the foreign trade of the United States as of December 31, 1952.

It will be noted from Figure 6 that in the total trade, the hauling was about equally split between the subsidized and non-subsidized ships. Figure 7 shows that the majority of combination vessels (primarily passenger carriers) are subsidized. The latter case is to be expected since a large percentage of the combination vessels' business consisted of hauling passengers.

The Department of Commerce report to the President entitled "American Merchant Marine and the Federal Tax Policy"[28] throws light on the actual value of the operating-subsidy program to the ocean-shipping industry. The report indicates that for the six years, 1946 through 1951, the subsidized companies earned an average of 12.3% return on net worth, while the subsidized companies earned only 5.7%. "During this period, federal taxes absorbed 46% of the operating profits of the non-subsidized companies compared with about 26% of the subsidized earnings."[29]

It would be a mistake to jump to the conclusion that the subsidy payments contributed an average of 6.6% to the earning of the subsidized lines. The true answer lies in the tax structure as it applies to subsidized lines in contrast to non-subsidized lines. The subsidized lines are subject to tax exemptions on reserve funds required to be set up under the law.[30] The non-subsidized companies receive no such advantage. The real advantage, it appears, accrues from the tax exemptions, not from the subsidy payment.

Inefficiency in operation tends to increase the cost of the subsidy to

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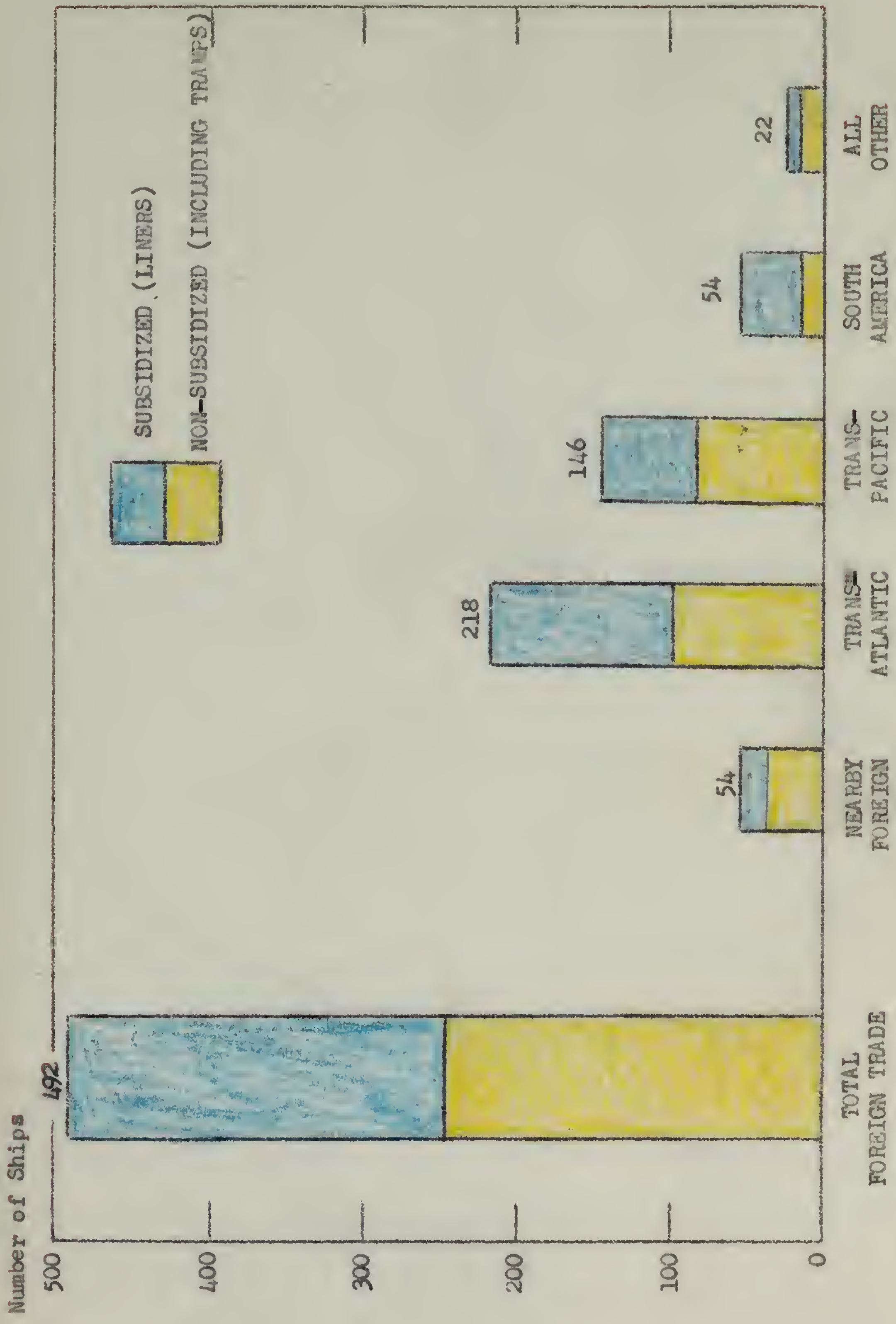
[28] Ibid., pp. 144-45.

[29] Ibid.

[30] See page 31.

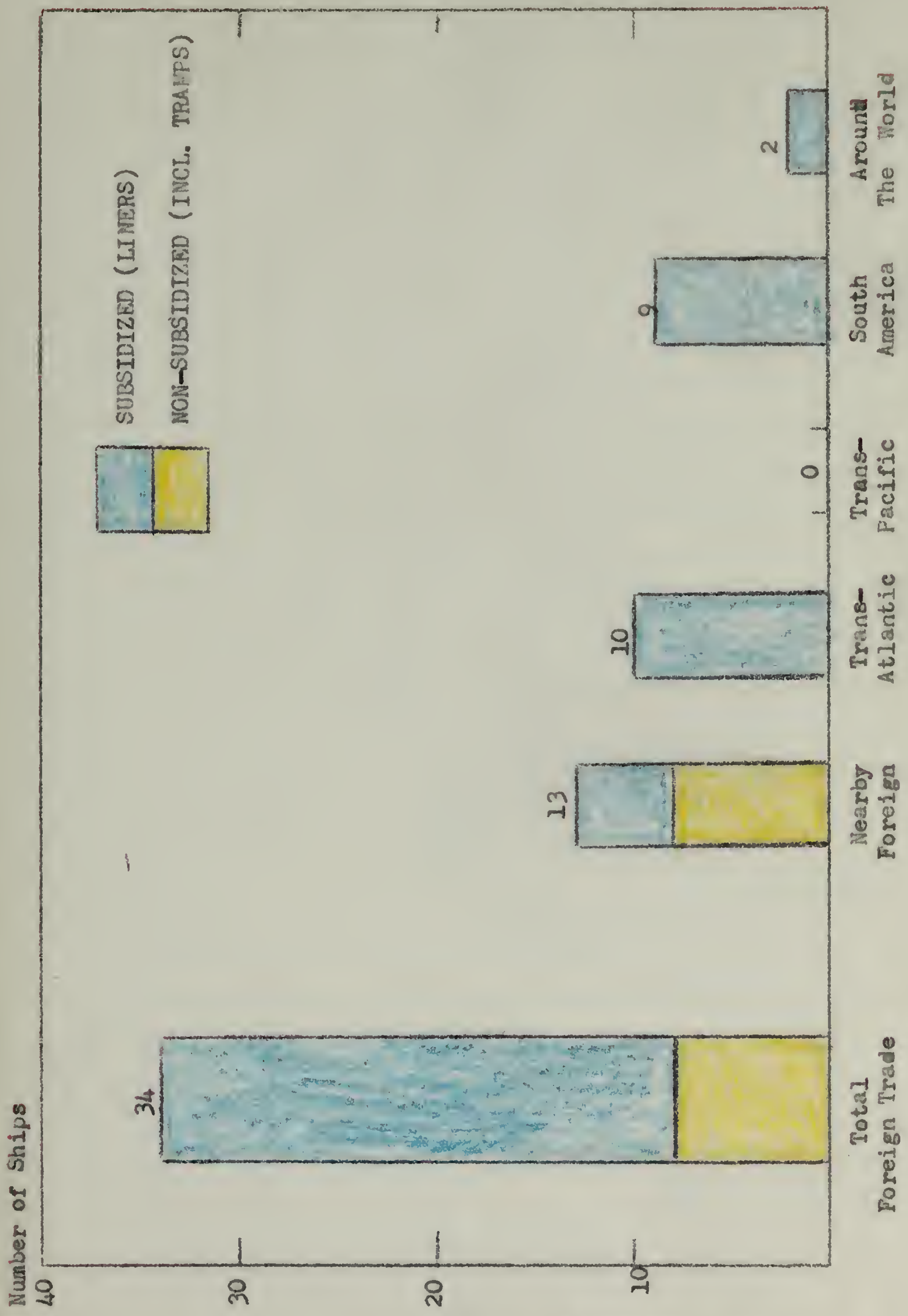
PRIVATELY-OWNED U.S.-FLAG SEA GOING FREIGHTERS
IN THE U.S. FOREIGN TRADE
DECEMBER 31, 1952



-Figure 6-

Source:
U.S. Depat.of Commerce,
Maritime Administration,
Ships Statistics Division.

U.S.-FLAG PRIVATELY OWNED COMBINATION
VESSELS IN THE FOREIGN TRADE
December 31, 1952



-Figure 7-

Source:
U.S. Dept. of Commerce,
Maritime Administration,
Div. of Ship Statistics.

the government. In its report to the President in 1952, the Maritime Administration made the recommendation that steps should be taken to insure the more efficient use of shipboard labor, the most significant element of operating cost. Non-subsidized operators must be efficient or perish.

Evaluation of the Program

It is not readily evident that the Operating-Differential Subsidy program has been a success. About half the freighter fleet, a quarter of the combination-vessel fleet, and all of the tanker fleet are conducting profitable operations without the subsidy, though their profits have not been high enough to attract much additional private capital. We can conclude that the subsidy program is actually keeping operators in the industry that might otherwise not be in it, and thus reducing the profits of the non-subsidized companies. If the plan is keeping ship owners in business, then it is achieving its objective. But it seems to be an extravagantly expensive way of doing so.

Summary

The Construction-Differential Subsidy Plan which started in earnest in 1936, appears to be a reasonable success at a fairly reasonable cost to the taxpayers. The plan appears to be achieving its end of maintaining a nucleus shipbuilding industry and it appears to be moving in the direction of overcoming the threat of block obsolescense.

The Operating-Differential Subsidy has been of dubious benefit to the merchant fleet. Undoubtedly it has kept some companies in business, but there is a question whether or not they deserve to be. Tax policy seems to yield more benefits than do the subsidy payments. Ironically, the subsidy is not applicable to tramps which are in most serious threat of bankruptcy. The idea

of applying the principle to the tramp trade has been advanced, but just how it could be administered has not been explained. The operating differential subsidy itself is difficult and expensive to administer when only regularly scheduled voyages are involved. How it could be economically applied to the haphazard operations of the tramps is anybody's guess.

CHAPTER V

THE CONTROL OF COMPETITION AND GOVERNMENTAL REGULATION

Fair Trade on the High Seas

> Shipping conferences are among the earliest cartels in international trade. Shipping conferences, or rings as they are sometimes called, are agreements organized by shipping lines to restrict or eliminate competition, to regulate and rationalize sailing schedules and ports of call, and, occasionally, to arrange for the pooling of cargo, freight monies, or net earnings. They generally control prices, i.e., freight rates and passenger fares.[31]

Some of the shipping rings have been conferences quite literally--informal oral agreements--but many have utilized written agreements, and employed full time secretariats, consummating written contractual arrangements which bind each member to the agreement, sometimes by cash performance bond.

Shipping conferences are ordinarily organized by geographic areas to cover particular trade groups. The areas involved cover the principal trading areas of the world. As of January 18, 1950, the foreign trade of the United States included conference agreements in nine different areas of export or import, numbering thirty-three different routes. These routes involved no less than 133 different freight, or passenger rate, agreements.[32]

There is, naturally, much over-lapping between conferences. Individual

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[31] Daniel Marx, Jr., International Shipping Cartels: A Study of Industrial Self-Regulation by Shipping Conferences, (Princeton, N. J.: Princeton University Press, 1953), p. 3.

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shipping lines may be parties to one or several conferences, depending upon the area in which they trade.

The basic purpose of shipping conferences is to minimize losses and maximize profits. Historically, most conference agreements were prompted by the necessity of stopping, or at least avoiding, the insanity of cut-throat competition. It takes little imagination to visualize the chaos which would result if all shipping in the international trade, where no one government could exercise control, were on a strictly competitive basis.'

> In short, the conference system provides a method for the self-regulation of an industry most of which is subject to the multiple jurisdiction of several sovereign nations with disparate legal codes and diverse commercial practices.[33]

Conference Methods of Controlling Competition

The shipping conferences control competition by the use of one or more of the following means: (1) rate agreements, (2) control of sailing schedules, (3) pooling of freight, and (4) "good faith" performance bonds. Certain other methods have been, and still are used in the foreign trade of some nations, though they are not permitted in the U. S. trades: (1) discriminatory agreements, (2) the use of "fighting ships," (3) delayed rebates; and, (4) tying agreements with shippers. These last techniques were used to minimize competition from outsiders.

Rate agreements usually consist of three types, providing for either fixed, minimum, or differential rates over particular routes for certain classes of cargo or passengers. Variation from the set rate can only be achieved by approval of all conferees. Ordinarily, rates are set to provide a satisfactory margin of profit to the highest-cost operators.

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[33] _Ibid_., p. 4.

Differential rates are customary in agreements covering passenger rates, because of the variations in services and accomodations offered to passengers on different ships.

The control of sailing schedules is another method used to control competition between members. Sometimes the total number of sailings each member is permitted during a year is stipulated. Occasionally, the dates of sailing are subject to agreement, while others restrict the ports of call which can be served by each member.

There are a variety of pooling arrangements, but they can be roughly classified as agreements to: (1) pool available vessels; (2) pool available freight and passenger traffic; or (3) pool gross freight or passenger monies and divide net proceeds among the members of the conference. Some agreements restrict the operations of shipping lines to certain areas. For example, the Matson Lines and the Dollar Line have an agreement which reserves all freight and surface passengers in the Hawaiian Islands trade to Matson, while all Far East and Orient trade is reserved for the Dollar Line. However, if Matson does haul cargo to Hawaii which is ultimately bound for the Orient, then they must pay over all net receipts to the Dollar Line.

Such agreements are permitted among the U. S. carriers because they do not restrict the operations of other parties who may be engaged in the Pacific trade.

While the Shipping Act of 1916 permitted U. S.-flag shipping lines to enter into conference agreements, the law specifically forbad the use of "fighting ships" and deferred rebates.[34]

A "fighting ship" is a vessel placed on berth by the conference to sail

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[34] The Shipping Act of 1916, 39 Stat 728, Section 14.

in competition with a non-conference carrier. By sailing such a ship on the same day, or possibly bracketing the competitor's vessel with two "fighting" vessels, non-conference competition was effectively discouraged. Often, the technique involved rate-cutting as well, which made the practice vicious and unethical.

Deferred rebates refer to "under-the-table" commissions to freight agents for reserving cargo exclusively for the vessels of a particular line. It has been common practice in many countries for agents to accept such commission, but it is now illegal in the United States trade.

Governmental Investigation

The operation of international shipping cartels came under investigation in both the U. S. and Britain in the early years of the present century. In 1906 a Royal Commission conducted a thorough investigation into their operations and the Alexander Subcommittee of the House Committee for Merchant Marine and Fisheries conducted a thorough probe in 1911. It is remarkable that the findings of the two groups were essentially the same. Both stressed the improvement in service that resulted from (1) the greater regularity of sailings, and (2) the improved ships that were made possible by the greater security which the conferences gave to capital invested in the steamship business. There was also agreement that the conference system provided greater stability to rates, a condition which all agreed was essential to the sound development of trade, provided the rates themselves were not excessive.

Prior to 1916, several suits were brought against U. S. shipping lines by the U. S. government for violation of the Sherman Anti-Trust Act by participating in shipping cartels. None of these suits ever reached the adjudication stage. Chiefly on the basis of the report by the Alexander Committee, Congress

specifically exempted the shipping lines from the provisions of the anti-trust laws and authorized their participation in shipping conferences so long as the agreements were published and filed with the Shipping Board.

Undoubtedly, the conference system has some shortcomings. The pooling of freight may result in overtonnage on certain routes. Also, a dual-rate system which allows lower rates to companies agreeing to employ conference shippers exclusively for given periods, restricts the freedom of action of individual shipping companies. But in the main, the system has been successful and has provided dependable service at reasonable rates. The consensus of opinion in American shipping circles is that the conferences do more good than harm.[35]

U. S. Governmental Regulation

Nearly every aspect of the United States-flag ocean shipping industry is now under some form of governmental regulation. Technical inspections are handled by the Steamboat Inspection Service; navigation practices and safety at sea are supervised by the Coast Guard; import duties are imposed by the Customs and Immigration Service; communications by the Federal Communications Commission, and so it goes. The regulation of rates and commercial practices are under the jurisdiction of the Maritime Administration and the Inter-State Commerce Commission.

The earliest legislation directly regulating the rates and practices of water carriers was the Shipping Act of 1916, which provided for the supervision of common carriers operating on regular routes on the high seas and the Great Lakes, in the foreign trade of the U. S., and in both interstate and non-contiguous domestic trade. Supervision was also provided for other persons carry-

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[35] Gorter, op. cit., p. 5.

ing on the business of forwarding freight or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water on the high seas or Great Lakes.[36]

The administration of the law of 1916, and the issuance of proper rules and regulations, the Congress invested in the United States Shipping Board. The Shipping Board continued in operation until it was disestablished by the Merchant Marine Act of 1936 and replacdd by the Maritime Commission, which, in turn, was succeeded by the Maritime Administration under the Reorganization Act of 1950.

The Act of 1916 declared certain practices of the shipping rings to be illegal in the trade of the United States. At the same time, the law permitted U. S. shipping lines to join such conferences, providing in Section 15 that:

> every common carrier by water . . . shall file immediately with the board a true copy, or if oral, a true and complete memorandum, of every agreement with another such carrier . . . to which it may be a party . . . fixing or regulating transportation rates or fares, [and] controlling or regulating competition; pooling or apportioning earnings; or otherwise regulating sailings between ports.[37]

If the Board found that such agreements were not unduly discriminatory to nonconference shippers, the agreements were allowed to stand.

It is noteworthy that the rules set down in the Act of 1916 apply to all vessels participating in the U. S. trade, both national and foreign. This also applies to the filing of agreements. The U. S. government reserves the right to deny entry or departure clearance to the ship of any nation which fails to comply with the laws.

Today, the Maritime Administration does not actually control water-shipping rates in foreign trade. However, the Administration does require that all

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[36] 39 Stat. 728 (1917), 40 Stat. 900 (1919), 46 USC, Art 801 (1940).

[37] The Shipping Act of 1916, 39 Stat. 728, Sect. 15.

rates be filed with the Department of Commerce, and the Maritime Administration has the right to review rates to determine their reasonableness. Over the years, the Shipping Board and its successors have determined standards of reasonableness which are calculated to yield a satisfactory profit to the operators.

Pooling is allowed under present law. In 1939 the Commission upheld an agreement to pool earnings in the United States North Atlantic-German run, because the result of the agreement was effective control of destructive competition without introducing unfair discrimination or being detrimental to foreign commerce. Other pool agreements have been disapproved because they work to the detriment of the industry as a whole.

The Maritime Administration exercises only indirect control over conference shipping rates through its power to approve or disapprove conference agreements. If the conference rates appear to be unreasonable, and cannot be defended by the conferees, then the agreement can be disapproved.

In general it can be said that the Maritime Administration and its predecessors have been successful in correcting unreasonable discrimination and some other abuses, and in restricting the growth of monopoly in the marine shipping industry. The fact that conferences have been required to keep an open membership policy has placed a potent restraint on their misuse.

Summary

The ocean-shipping industry, particularly in the liner trade, has succeeded in regulating itself through the use of international shipping conferences. While these conferences tend toward monopoly, this tendency has been kept in check, at least in the U. S. foreign trade, by aggressive U. S. laws requiring that the agreements be approved by the Maritime Administration and that membership remain open to any ship operator desiring to join. The confer-

ences have done more good than bad, and have brought order out of chaos.

Formal U. S. government regulation of shipping in the U. S. trade began with the Shipping Act of 1916. Congress placed a tremendous amount of power in the hands of the Shipping Board and its successors which power has been used to the overall benefit of the industry. In 1936, the administration of domestic trade was placed under the jurisdiction of the Interstate Commerce Commission. In conjunction with the cabotage laws, to be discussed in Chapter VI, the Interstate Commerce Commission now exercises close control over water-borne domestic commerce.

It is felt that some government control of this vital industry is necessary for the good of international trade. Present regulatory legislation appears to be accomplishing its purposes.

CHAPTER VI

THE RESERVATION OF COASTWISE TRADE

The Cabotage Regulations

The first Act of the First United States Congress in the year 1783, concerned protective tariffs. The law provided for high import duties on commodities imported in ships of foreign flag, and a discount on import duty for commodities imported in American-flag vessels. An 1817 Act specifically reserved domestic commerce to vessels of American ownership and registry. The Act declared that all coastwise and domestic shipping of the United States would be transported in vessels built and registered in the United States, owned and operated by citizens of the United States.

Present cabotage regulations, which reserve all coastwise, inter-coastal, and non-contiguous water-borne traffic to transportation in U. S. bottoms, are a combination of law and administrative regulations issued by the Interstate Commerce Commission and the Maritime Administration. Basically, they are founded upon the Act of 1817, as further amended by Acts of 1886 and 1920.

The Merchant Marine Act of 1920 provides the most recent expression of the attitude of Congress toward this important segment of the water-borne shipping industry:

> No merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, . . . either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who

are citizens of the United States.[38]

Sections 18 and 22 of the Act permitted the Shipping Board to allow certain foreign vessels to operate in the trade of the Philippine Islands and Canadian vessels to operate in the trade of Alaska.

The United States is not alone in the principle of cabotage. It can be categorically stated that every maritime nation in the world reserves its domestic water-borne commerce to vessels of its own nationality.

The participation of foreign-built or registered vessels also extends into the fields of towing and dredging. Except in emergency, a foreign-built or foreign registered tug is forbidden to tow any vessel in United States territorial waters. Under a law of 1906, a foreign-built or foreign-owned dredge is forbidden to dredge in United States waters.

The cabotage laws and regulations are very restrictive to foreign vessels entering U. S. waters. If, for example, a British ship outbound from Europe lands half its cargo in New York with the remainder destined for New Orleans, that vessel cannot reload the vacant space with U. S.-owned cargo bound for that port. She can reload for a foreign port, but not for another U. S. port, or even a port in a U. S. possession or territory.

In the coastwise domestic trade, the merchant marine competes with the railroads and motor trucks. In order to eliminate cut-throat competition, the Interstate Commerce Comisssion has established rate schedules to favor one or the other means of transportation in certain areas and certain types of cargoes. For example, due to the rate schedules, it would be altogether uneconomical to move petroleum products from Texas to New Jersey by rail--tankers can do it much cheaper. Interstate Commerce rules prevent rate-cutting by the railroads

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[38] Merchant Marine Act of 1920, Sect. 27, 41 Stat. 988.

to steal any portion of the merchant marine's tanker business.

The size of the fleet engaged in domestic and non-contiguous trade is about half the size of the foreign-trade fleet. In 1952 a total of 478 vessels were engaged in domestic trade, 308, or nearly 65% were tankers, and the rest freighters. There is very little coastwise passenger service due to the relatively high Interstate Commerce passenger rates on ships. The major portion of the coastwise trade consists of petroleum movements from the Gulf of Mexico to East Coast ports of the United States. Again, 1952, a total of 356 vessels were engaged in strictly coastwise trade, 294 of which were tankers. In that same year, only 57 vessels were engaged in intercoastal trade via the Panama Canal and most of which (49) were dry-cargo freighters. Relatively little petroleum is moved from the Gulf to the West Coast; most of the west coast crude oil originates in California.

The non-contiguous trade between U.S. ports and possessions or territories is relatively small. In 1952, only 65 vessels of one thousand gross tons or over were engaged in such trade.

In the past, coastwise vessels were limited by their design to that purpose alone. However, that is not now the case. With few exceptions, steamships engaged in domestic trade are now equally fitted to participate in foreign trade or serve as naval auxiliaries if the need arises. Thus the cabotage laws and regulations have served to bolster the size of the merchant marine for defense purposes.

Vessels engaged in domestic trade are not eligible for the operating-differential subsidy, nor for the construction-differential subsidy. The cabotage regulations provide sufficient assurance of their cargoes, and ships built for the domestic trade are able to conduct profitable operations without

direct subsidization.

Coastwise shipping has increased steadily since the last War, chiefly in the tanker trade. Domestic freighter traffic has tended to decrease slightly, but the increase in the demand for the transportation of petroleum has more than offset the decrease in dry-cargo movements.

The domestic water-shipping industry is considered, by the Department of Commerce, to be in good health. The fleet is large enough to meet commercial needs, new vessels (particularly tankers) are being built and the future outlook is favorable. The coastal shipping fleet appears to be the most prosperous segment of the United States merchant fleet.

CHAPTER VII

CARGO PREFERENCE

The United States is the first nation to return to the principle of cargo preference as a matter of national shipping policy. However, it is important to understand that the new cargo preference policy is limited to U. S. government owned or financed cargoes. Cargo preference does not extend to purely commercial freight, even though many European nations have chosen to claim that it does.

American subsidy policy has drawn few complaints from other maritime nations and cabotage is an established international practice--every maritime nation regulates international water-borne commerce within its own territorial waters. But recent U. S. cargo preference legislation has drawn heavy fire from foreign shores. Much of the criticism is ill-deserved and inspired by nationalistic desires for economic gain.

It is only natural that foreign maritime nations such as Britain, Norway, Sweden, and Japan should be sensitive to U. S. legislation which affects their merchant fleets. International shipping is an important part of their economies. To the United States, though the merchant marine is important as a defense facility, and as a stabilizing influence inthe shipping market, it is but a small segment of the whole economy.

To foreign nations our national maritime policy seems inconsistent. On the other hand we are granting billions in foreign aid and on the other we are restricting their ability to support themselves. This inconsistency is not

easily explained.

Historically, the first recurrence of the cargo preference principle appeared as an amendment to the U. S. Army appropriation act of 1904. That amendment decreed:

> vessels of the United States, or belonging to the United States, and no other, shall be employed in the transportation by sea of coal, provisions, fodder, or supplies of any description, purchased pursuant to law, for the use of the Army or Navy . . .[39]

Through practice, this law has come to be applied on the basis that at least half of such traffic should be reserved for U. S.-flag commercial vessels.

On the basis of the statute of 1904, it has been policy since that time to transport at least fifty percent of the cargoes in the logistic support of the armed forces in privately-owned U. S.-flag merchant ships.

The next piece of legislation relating to preferential treatment of the merchant marine with regard to government-owned cargoes came in 1934. Shortly after the Reconstruction Finance Corporation began operation, Congress announced Joint Resolution Number 17 which stated:

> that it is the sense of Congress that in any loans made by the Reconstruction Finance Corporation or any other instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States . . .[40]

The Merchant Marine Act of 1936 regislated in favor of the preferential treatment of the U. S. Merchant Marine in the transportation of government officials traveling abroad:

> Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships regis-

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[39] 33 Stat. 518, Ch. 1766, April 28, 1904.

[40] Public Resolution 17 (73d Congress), March 26, 1934.

tered under the laws of the United States . . .[41]

During the early post-war years, foreign aid became a major part of ocean cargoes. With foreign merchant marine fleets heavily decimated as a result of the war, the American merchant fleet carried a large portion of the cargoes. As foreign merchant fleets began to recuperate, especially with the surplus ships sold to foreign owners under the Merchant Ship Sales Act of 1946, competition revived. Seeking to preserve the position of our own commercial fleet, Congress took particular care to include preferential cargo provisions in every Act granting aid to foreign countries. Provisions to the effect that

> at least 50 percentum of the gross tonnage of commodities procured out of the funds made available under [this Act] and transported to or from the United States on Ocean vessels . . . shall be transported on privately-owned United States-Flag vessels . . .[42]

Each of the following laws, all relating to foreign aid, contained provisions similar to the one quoted above:

(a) Mutual Defense Assistance Act of 1949 and amendments

(b) Korean Aid Act (Far Eastern Assistance Act), P. L. 447, 81st Congress

(c) Yugoslav Emergency Relief Assistance Act of 1950

(d) India Emergency Food Aid Act of 1951

(e) Mutual Security Acts of 1951, 1952, and 1953

(f) Pakistan Wheat Act of 1950

(g) Emergency Agricultural Commodities Assistance Act of 1954

(h) Agricultural Trade Development and Assistance Act of 1954

By 1954, cargo preference with respect to government-owned or financed cargoes, had become a standard policy with the Congress.

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[41] Merchant Marine Act of 1936, Title IX, Section 901.

[42] ECA Amendments of 1949, PL 47, 81st Congress, Sec. 6(a).

The Cargo Preference Act of 1954

On August 26, 1954, the Congress enacted permanent legislation guaranteeing preferential treatment of the United States merchant marine in the transportation of government-owned or government-financed commodities. This Act was known as the Cargo Preference Act of 1954, Public Law 664. The Act has commonly been called the "50-50 Law."

Public Law 664 was an amendment to Section 901 of the Merchant Marine Act of 1936 which applied only to the transportation of officers or employees of the government on official businesses.[43] The amendment provided as follows:

Section 901 (b):

> Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of Section 901(b) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Number 17, Seventy-third Congress (48 Stat 500), as amended.[44]

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[43] See page 52.

[44] Public Law 664, 83d Congress, approved August 26, 1954.

The law applies in four kinds of situations: (1) where the United States procures, contracts, or otherwise obtains for its own account equipment, materials, or commodities; (2) furnishes equipment, materials, or commodities to or for the account of any foreign nation without provision for reimbursement; (3) advances funds or credits; or (4) guarantees the convertibility of foreign currencies in connection with the furnishing of such equipment or materials. It has no application to purely commercial transactions where a broker or exporter sells to a firm abroad without the participation of the U. S. government.

The Butler Committee, a subcommittee of the Senate Committee for Interstate and Foreign Commerce, stated the purpose of the law: "The urgent need of the American Merchant Marine is for cargoes--and it is this need that S-3233 is designed to meet."[45]

Opposition to the Proposed Law

Opposition to the proposed amendment to Section 901 of the Merchant Marine Act of 1936 was relatively superficial. Some reaction came from foreign maritime nations, but most opposition came from the executive branch of the government, namely the Department of Defense, the Department of State, and the Foreign Operations Administration. The General Services Administration, which is charged with the procurement of stockpile strategic materials and to whose operations the off-shore procurement provisions of the Act would apply, registered no significant opposition. The Department of Agriculture indicated it had no interest in the proposed law.

The Department of Defense's opposition to the proposed extension of 50-50 coverage was expressed by Vice Admiral F. C. Denebrink, the Commander of

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[45] U. S. Senate, Report No. 1584, June 11, 1954, p. 6.

the Military Sea Transportation Service. He protested that "the bill contains no savings clause with reference to the national security . . . there is no stipulation for providing for liberalization of its terms even in the event of war or national emergency."[46] The Admiral went on to say: "in the interest of national security, the Department of Defense cannot accept restrictions, actual or implied, which would adversely affect its control of military logistic support including ocean transportation."

In order to overcome Defense's objections, the committee inserted the emergency proviso in the bill which provided for the waiver of its requirements in the event of war or national emergency. This satisfied the Department.

The Department of State objected on the basis that the bill would invite foreign nations to discriminate against American-flag vessels and thus, in the long run, be detrimental to American shipping. Mr. Thorsten V. Kilajarvi, Deputy Assistant Secretary for Economic Affairs, introduced copies of Aide Memoirs from nine different European maritime nations all of which alluded to the precedent which the bill would establish, and containing veiled threats of retaliation. The tenor of the following notes are typical:

From Norway:

> The recurrent appearance of more and more restrictive legislation in the shipping field is considered by the Norwegian Government to embody a very dangerous tendency, not only in its direct effect on the operational conditions of international shipping but also because of the precedent it establishes and because it encourages similar measures by other countries.[47]

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[46] U. S. House of Representatives, Waterborn Cargoes in United States-flag Vessels, Hearings before the Committee on Merchant Marine and Fisheries, June 23-25, 1954, p. 3.

[47] *Ibid.*, p. 47.

From West Germany:

> The measures provided in the bill, when set into force, will undoubtedly deliver an unfortunate example to other countries and encourage them to promote restrictions with the result that the free commercial intercourse would severely be hampered.[48]

From Britain:

> The United States Government will not have overlooked the probability that these proposals, if adopted, would undoubtedly encourage the introduction by other countries of similar discriminatory shipping measures to an extent far greater than those now existing.[49]

And so it went.

To fully appreciate the grave concern of foreign nations, one must remember that, by 1954, stiff competition had returned to the world shipping industry. Not only was the American merchant fleet feeling the sting of foreign competition, but competition among the foreigners themselves had reached severe proportions. The foreign maritime nations were categorically opposed to anything that would magnify the problems of their own shipping industries.

The Foreign Operations Administration's objections to the proposal were founded on the basis that the law would be extremely difficult to administer. As Mr. Arthur B. Syran, Director of the Office of Transportation pointed out, "the extension of the 50-50 rule to so-called offshore procurement for foreign aid would not, we think, create any difficulties insofar as our operations are concerned . . ."[50] "But," he pointed out, "the law would be difficult to administer equitably."

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[48] Ibid., p. 49.

[49] Ibid., p. 50.

[50] Ibid., p. 23.

Proponents of the Amendment

The marine shipping industry through its five major trade associations was unanimously in favor of the bill. The United States Chamber of Commerce, the maritime labor unions, and the shipbuilding industry, whole-heartedly endorsed the proposal. All of these organizations, for their own reasons, were anxious to see temporary cargo preference written into permanent law.

The Law Passed Without Debate

The Committee of both Houses of Congress reported favorably on the bill. On August 26, 1954, the bill passed both Houses without debate, and the President approved it.

Cargo Preference and the Agricultural Surplus Disposal Program

The Agricultural Trade Development and Assistance Act of 1954, Public Law 480, 83d Congress, provided for the sale, by the Commodity Credit Corporation, of surplus agricultural commodities to foreign nations at a price near to the Corporation's cost. An important element of the Act was the fact that the CCC, as the government's agent, was authorized to sell directly to foreign importers, without working through the foreign government, and could accept foreign currency in payment. This provision had the important effect of removing the dollar-exchange obstacle from the transactions. Upon receiving foreign currency, the CCC would then deposit the foreign currency in a bank within the country, to the U. S. government's account. Approximately half the proceeds were to be loaned to the foreign government on a long-term, low interest basis, and the remainder was to be spent within the country by the United States. The law provided that $1.5 billion in agricultural surplus commodities be disposed of in this manner. It amounted to selling the com-

modities to foreigners, and then letting them keep the money.

The Congress foresaw difficulties in the administration of the Act with regard to transportation in high-cost U. S.-flag commercial vessels and so it provided that the differential costs between U. S. and foreign freight rates would be borne by the U. S. government. So far as the purchaser was concerned, it could cost no more to ship in an American vessel than in a foreign-flag vessel.

In a ruling of December 15, 1954, the Attorney General declared that since Title I of Public Law 480 guaranteed the convertibility of foreign currencies, and since the 50-50 law specifically related to transactions involving the conversion of foreign currencies, then all shipments of agricultural surplus commodities came under the 50-50 provisions. The Department of Agriculture, which had heretofore been silent on the 50-50 principle, immediately set up a terrific howl. The hue and cry was picked up by foreign shipping interests who claimed that, by permitting an agency of the U. S. government to deal directly with foreign private citizens, the transactions took on the color of purely commercial dealings. The foreigners insisted that the U. S. had returned to the long-dead principle of discriminating against foreign shipping in the commercial trade.

The House Committee for Merchant Marine and Fisheries held extensive hearings[51] on the administration of the 50-50 law, particularly as it related to the agricultural program, in February, 1955, and again in January-February, 1956. The hearings of February, 1955 were touched off by a newspaper article

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[51] U. S. Senate, Report No. 1584, op. cit., also; U. S. House of Representatives, Operation and Administration of the Cargo Preference Act, Hearings before the House Committee for Merchant Marine and Fisheries, January 31 & February 1-16, 1956, (Washington, D. C.: Government Printing Office, 1956), p. 601.

which appeared in the Washington Post and Times Herald on January 31, 1955:[52]

> The administration's program for selling farm surpluses overseas is running into a bottleneck because of a ship-American provision in the new law, informed sources said yesterday.[53]
>
> They said the Department is having trouble finding space on American vessels for nearly $60 million worth of commodities already under contract for shipment abroad.

The hearings sought to determine: (1) whether or not there was a shortage of shipping to handle the agricultural products; and (2) was there justification in the allegation that the Cargo Preference law was causing delays in the execution of the surplus disposal program.

The Department of Agriculture presented a pitifully weak case. Their whole argument was based on the facts that: (1) Denmark had refused to negotiate a contract because Danish-flag vessels could not haul the majority of the cargo; (2) that extra shipping costs in U. S.-flag vessels had cost the Department $3 millions more than shipping would have cost in foreign-flag vessels. With the whole $1.5 billion program more than sixty-five percent complete in less than a third of the time allotted by the law, there was no defensible ground in the claim that cargo-preference was a bottleneck. Representatives of the shipping industry showed that the personal income tax return alone of the personnel involved by the tramp ships engaged in the transportatio more than compensated the U. S. government for the freight differentials accruing from the use of American-flag ships.

But the Department of Agriculture kept trying. In the Agricultural Act of 1956 which was vetoed by President Eisenhower on April 16, 1956, a provision was inserted which would exempt overseas shipments of agricultural commodities

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[52] Washington Post Times Herald, January 31, 1955, UP Release by Patricia Wiggins.

[53] The informed source was obviously the Department of Agriculture.

from the 50-50 law. After bitter debate on the floor of the Senate[54] the provision was defeated by a vote of 57 to 23.

Foreign Reaction to 50-50

Foreign maritime nations are not the "clean-living" characters they would like to pretend to be. Though no foreign nations have resorted to direct subsidy or direct legislation with respect to cargo preference, they have for years indulged in discriminatory practices affecting the operations of foreign-flag shipping. During the 81st Congress, the Committee for Merchant Marine and Fisheries published a report on aids to shipping practiced by foreign governments. On pages fourteen through sixteen of the report, there are listed forty different methods used by foreign nations to grant preferential treatment to their national-flag shipping. These practices range from tax relief to currency manipulation. Morally, the foreigners are on thin ice when they criticize United States maritime policy.

At the present time it appears that retaliatory acts by foreign parliaments, in response to the U. S. Cargo Preference Act, have failed to materialize, except in Brazil and Saudi Arabia. It is not considered likely that the Brazilian law will stand for long, and King Ibn Saud's agreement with a Greek ship operator to ship at least fifty percent of Arabia's crude oil in the Greek's vessels, affects the British merchant marine much more than ours. It is doubtful if any nation will choose to slug it out toe-to-toe with the United States on the cargo preference issue. Since American aims are not to monopolize the ocean shipping trade, it is clear that U. S. policy will not interfere with foreign shippers to any great extent. Fifty-fifty only applies to cargoes in

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[54] See <u>The Congressional Record</u>, March 19, 1956, pp. 4408-25.

which the government is involved and that tonnage is steadily decreasing.

Difficulties in Administration

The 50-50 law has probably had greater impact on the Department of Defense than any other executive department of the government, for Defense procurement and distribution are world-wide in scope. Certain difficulties in interpretation have complicated the problem of administration of cargo preference: (1) the act specifies that "at least 50 per centum of the gross tonnage" shall be transported on American-flag vessels; (2) that the gross tonnage shall be "computed separately for bulk carriers, dry-cargo lines, and tankers"; and (3) that it shall be administered by "geographic areas."

Gross tonnage is not a measure of cargo, but of ship cargo-carrying capacity. Cargo is ordinarily measured in long-tons. Freight rates are usually on the basis of long-ton miles. The question immediately arose: did Congress intend that the law be administered on the basis of tons or ton miles? When the relative lengths of voyages are considered, it makes a great deal of difference.

The requirement that gross tonnage be computed separately for bulk, dry, and liquid cargoes has made it necessary that an extensive system of reporting be established to insure that the law is being complied with. It appears easy at first glance, but when the outer shell is pealed off, real difficulties show up. How is the question of which cargoes are to be shipped commercially to be determined? If two shiploads of petroleum are being shipped from Persia to Japan, must one go in a commercial vessel? If the Act requires transportation in U. S. privately-owned vessels, the administration would be relatively easy, but under the 50-50 requirement, the division of cargo becomes very difficult.

A few cases which point out the difficulty of administration of the law

are presented as examples.

If a U. S. aircraft manufacturer, under contract for airplanes for the Air Force, buys aluminum in Germany (where aluminum is cheap), his purchases are subject to 50-50 transportation requirements because he is under a cost-plus-fixed-fee contract, and government funds are involved. Supposing his purchase amounts to a whole shipload, and he is anxious to keep shipping costs as low as possible. Must he split his shipment between a U. S.-flag and a foreign-flag vessel? If he does so, he would be subject to less-full-load rates which are much higher than full-cargo rates, which is an economically unsound practice. Must he ship the full load via U. S.-flag ship, or may be ship it all on a foreign vessel, and ship a later purchase in an American ship? These are the type of questions which confront administrators of the statute.

Where off-shore procurement is involved, freight costs become very important. If government money is involved in any way, a contractor must consider the cargo preference aspect in his purchases. Naturally, bids are higher where U. S.-flag shipping is required, which means ultimately higher costs to the government. It amounts to indirect subsidization of American-flag shipping through various government programs.

Petroleum purchases are a major segment of defense purchases and most petroleum products originate overseas. The Armed Services Petroleum Purchasing Agency (ASPPA) buys and distributes all petroleum products for the armed forces. Under the Act of 1904, and Public Resolution No. 17, all such purchases must be transported in either U. S.-owned, or U. S.-flag privately-owned vessels. MSTS tankers move about 52% of the POL products and U. S. commercial tankers about 48%. Under the two laws cited above, ASPPA has a certain amount of leeway where ocean transportation is <u>not</u> involved. In order to purchase certain products,

such as aviation gasoline for the support of Air Force units in Europe, ASPPA normally purchases through local markets within the foreign country concerned. This practice results in considerable economy to the U. S. government, both in direct cost and in the large capital investment which would be required if the government provided its own facilities. Furthermore, the practice provides revenues to the local economies which the United States has been trying desperately to reinforce since the beginning of the Marshall Plan. However, under strict interpretation of the Cargo Preference Act this practice would have to be discontinued since the end product is to be purchased with government funds, then the component products are also subject to 50-50 transportation. This would have the unfortunate effects of (1) increasing the direct cost of purchases by ASPPA; (2) requiring vast capital investment in storage facilities; and, (3) taking much-needed business out of the local economies which we, on the other hand, are trying to assist. If the Congressional Committees choose to apply the 50-50 law in this extreme--and well they might--the result could be seriously detrimental to our defense and foreign aid programs.

These, and many other examples are occurring under the Cargo Preference Act of 1954.

In order to satisfy the requirements for distribution by geographic areas, the Military Sea Transport Service divided the world into twenty shipping areas. Since the law applies to cross trade as well as direct trade, this means that there are 20 x 20, or 400 different routes which must be administered separately to meet the requirements of the law. The number of bookkeepers and clerks required for this operation amounts to a considerable addition to the federal payroll.

There appears to be no easy, cheap way to administer this law. There is

little question that it will increase the costs of procurement and transportation and impose an additional clerical expense as well.

What Has the Law Achieved?

It is not difficult to show that the cargo preference idea has brought additional cargoes--and revenue--to the American merchant marine and to the tramp trade in particular. The following statistics demonstrate the point:

During the calendar years 1953-54, the United States exported 88.7 million tons in foreign trade. 79.2 million tons were commercial cargo, and 9.5 million were foreign aid cargo. U. S.-flag commercial vessels carried 23% of the total exports and 54% of the aid cargoes. The distribution of carryings was as follows:[55]

Of the Total Tonnage,

U. S. Liners carried	19%
U. S. Tramps carried	4
Total	23%

Of the Commercial Cargo:

U. S. Liners carried	18%
U. S. Tramps carried	2
Total	20%

Of the Foreign Aid Cargo:

U. S. Liners carried	30%
U. S. Tramps carried	24
Total	54%

U. S. Tramps carried only 2% of the total export trade, but carried 24% of the foreign aid cargoes which are subject to 50-50 provisions. It is obvious that without cargo preference provisions, the U. S. tramp fleet would be greatly handicapped.

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[55] U. S. Department of Commerce, Maritime Administration, Statistics and Special Studies Office, "Vessel Utilization and Performance Report," February 2, 1956.

During the 1956 hearings on the Administration of the Cargo Preference Act before a House Committee, Mr. James B. Stuart, President of the American Tramp Shipowners Association, made a statement that pretty well sums up the dependency which U. S. tramp operators placd in the cargo preference principle:

> I can tell you categorically that without the 50-50 provisions of existing law it would be impossible for the American tramp fleet to continue in existence at anything like its present size. In the absence of operating subsidy, our tramp fleet would be driven from the seas almost immediately should the 50-50 statute be repealed.[56]

Conclusions reached by the Department of Commerce seem to collaborate Mr. Stuart's opinion.

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[56] U. S. House of Representatives, Waterborne Cargoes in United States-flag Vessels, Hearings before the Committee on Merchant Marine and Fisheries, June 23-25, 1954, p. 551.

CHAPTER VIII

CONCLUSIONS

It is quite apparent that the United States merchant marine is in need of assistance if the country is to have a merchant marine capable of meeting the requirements of the national policy as expressed in the Merchant Marine Act of 1936, and later Acts. It is especially apparent that the tramp ship operators require assistance, and that if continued assistance is not forthcoming the U. S.-flag tramp fleets will disappear from the seas.

Cargo preference so far has been the only factor which has kept the tramp fleet in business. It can be statistically shown that without preference cargoes, the U. S. tramp fleet would be measurably worse off than it is at the present time. Regardless of what stand the opponents to the cargo preference principle take, it is difficult to deny the fact that such legislation has done some good. Granted, the 50-50 requirements have tended to increase government costs in many areas, but when viewed broadly, does it make any difference which pocket the funds are taken from, when all funds come from the same bank account?

The philosophy behind the 50-50 law appears to be sound. Whether or not the type of legislation which we now have is the ultimate answer is another question. There are some serious deficiencies with the present law.

The present laws are difficult and costly to administer. Though they appear to achieve their purposes, they do so at a very high cost. It would probably be impossible to compute the overhead costs involved in the execution of the program. It would seem sensible that a plan which would put the cargoes,

or dollars, into the hands of the tramp operators without involving excessive administrative costs would accomplish as much, or more, at less expense to the treasury.

Several ideas have been advanced. One school maintains that additional tax relief would provide an answer. In the case of the operating-differential subsidy, the tax exemptions now permitted appear to be of as much, or more, effect as the subsidy itself. Another line of thought is that the tramp ship operators should be placed under a direct subsidy similar to the operating subsidy. Great Britain tried that in 1935, with no success. The dividing line between tramp operations and liner operations is very hazy and ill-defined. The present operating subsidy is limited to a specified number of voyages over certain routes. The administration of a tramp subsidy would be extremely difficult to administer equitably.

Another valid criticism of cargo preference is the fact that it is a short-range solution to a long-range problem. As previously stated, most of the tramp cargoes have been foreign aid freight. Foreign aid cargoes have been steadily declining since 1948, and eventually will decrease to a mere trickle. It is estimated that by 1960 there will not be enough government-financed cargoes to keep the present tramp fleet going even if 100% cargo preference is required. Cargo preference does not appear to be a long-range answer.

Sooner or later, the nation must face up to the fact that if the merchant fleet is to be maintained at an appropriate level, then the taxpayers are going to be required to foot the bill. The sooner a decision is reached, and the simpler the solution is, the cheaper that solution will be.

The following steps might lead to a plausible solution:

(1) The size of the Liner and Tramp fleets we need to meet the needs

of defense, and to stabilize the shipping market must, within reasonable limits, be logically determined.

(2) A level of ship utilization should be determined which should be based on the number of steaming hours, or days, or ton-miles a vessel must operate in order to earn a fair return for its owners.

(3) A direct cash payment should be made to shipowners on a scaled percentage of ship utilization.

This solution would at least have the virtue of recognizing that the merchant marine is important to the commercial well-being and military security of the nation. It would also offer the following advantages:

(1) The merchant fleet would be able to compete on equal footing in the world trade. Tramps would be able to compete in the cross trades.

(2) By giving shipowners an opportunity to earn a reasonable return, there will be greater attraction for private capital in the maritime industries,and a reduction in construction subsidies might become possible.

(3) It would minimize overhead costs in administration and probably result in an overall economy.

There is no doubt that such a program of subsidization is strongly tinged with socialism. Yet it contains the element of free enterprise without which it would fail. A purely socialized merchant fleet would not be an answer, and it has already been demonstrated that private enterprise cannot carry on the job alone. Somehow, we must reach a balance between government aid and free enterprise.

No nation has risen to greatness on free enterprise alone, nor on the strength of arms alone. It is the delicate balance between the democratic ideals of free enterprise in commerce and the oligarchial principles of military

strength which leads nations on to wealth and prosperity. There is nothing democratic about a military force, but we need it--there is something socialistic in supporting a merchant marine, but we need that too.

BIBLIOGRAPHY

Books

Arzt, Frederick K. Marine Laws. New York: Equity Publishing Co., 1953.

Benson, William S., RADM, USN. The Merchant Marine. New York: Prentice Hall, 1923.

Eisenhower, General D. W., Crusade in Europe. New York: Doubleday Book Co., 1946.

Glover, John G. and Cornell, W. B. The Development of American Industries. New York: Prentice-Hall, 1951.

Marx, Daniel Jr. International Shipping Cartels: A Study of Industrial Self Regulation by Shipping Conferences. Princeton, N. J.: Princeton University Press, 1953.

O'Connor, T. V., Chairman U. S. Shipping Board. American Cargo for American Ships. Washington: The Government Printing Office, 1926.

Articles

Collins, John J. "The American Merchant Marine in World War III," U. S. Naval Institute Proceedings, Annapolis, Md., February, 1956.

Gorter, Wytze, "United States Merchant Marine Policies: Some International Economic Implications," Essays in International Finance. June, 1955. Princeton, N. J.: Department of Economics and Sociology, Princeton University.

Public Documents

U. S. Congress, Committee on Interstate and Foreign Commerce. Permanent Cargo Preference Legislation. Senate report No. 1584 to accompany S. 3233. 83d Cong., 2d Sess. Washington: Government Printing Office, 1954.

U. S. Congress, Senate. Subcommittee for Merchant Marine and Fisheries, of the Committee for Interstate and Foreign Commerce, Cargo Preference Bill (50-50 Cargo). Hearings on S 3233, May, 1954. Washington, Government Printing Office, 1954.

U. S. House of Representatives. Committee for Merchant Marine and Fisheries. Amending the Merchant Marine Act of 1936 to Provide Permanent Legislation for the Transporting of a Substantial Portion of Waterborne Cargoes in United States-Flag Vessels. House Report No. 2329 to accompany S3233. Washington; Government Printing Office, 1954.

U. S. House of Representatives. Committee for Merchant Marine and Fisheries. Waterborne Cargoes in United States Vessels. Hearings on S 3233, June, 1954. Washington: Government Printing Office, 1954.

U. S. House of Representatives. Committee for Merchant Marine and Fisheries. Administration of the Cargo Preference Act. Report No. 80, 84th Congress, 1st Session, on administration of PL 664, 83d Congress. Washington: Government Printing Office, 1955.

U. S. House of Representatives. Committee on Merchant Marine and Fisheries. Cargo Preference and its Relation to the Farm Surplus Disposal Program. Report No. 1818, 84th Cong., 2d Sess. Washington: Government Printing Office, 1956.

U. S. House of Representatives. Committee on Merchant Marine and Fisheries. Operation and Administration of the Cargo Preference Act. Hearings on administration of Public Law 664, 83d Cong., 2d Session. Washington: Government Printing Office, 1956.

Congressional Record. Vol. 102, March 16, 1956, "Debate on the Agricultural Act of 1956, U. S. Senate," pp. 4408-4425. Washington: Government Printing Office, 1956.

U. S. Department of Commerce. Maritime Administration. Direct and Indirect Types of Maritime Subsidies with Special Reference to Cargo Preference Aid. Report to the President of the United States. Washington: Department of Commerce, April, 1956.

U. S. Department of Commerce. Maritime Administration. Maritime Subsidy Policy. Report to the President. Washington: Department of Commerce, April, 1954.

U. S. Department of Commerce, in cooperation with the Department of Treasury, American Merchant Marine and the Federal Tax Policy. Report to the President. Washington: Department of Commerce, November, 1952.

U. S. Department of Commerce. Maritime Administration. Merchant Fleets of the World, September 1, 1939-December 31, 1951. Washington: Department of Commerce, 1952.

U. S. Library of Congress. Legislative Reference Service. The American Merchant Marine Policies and Problems. A Survey for the Committee on Merchant Marine and Fisheries, House of Representatives. Washington: Government Printing Office, 1954.